



**METROPARKS  
TOLEDO**

## **PROJECT MANUAL**

### **Metroparks Toledo – Riverside Trail East, 1001 Front St., Toledo, Ohio 43608 – PID 107480**

**Planning &  
Construction  
Department:**

Metroparks of the Toledo Area 419.407.9700 T  
Fallen Timbers Field Office 419.482.0684 F  
6101 Fallen Timbers Lane  
Maumee, Ohio 43537

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***Marty Overholt***  
Project Planning

***Pete Boss***  
Administrator

**Disadvantaged Business Enterprise (DBE) goal:** 7%

**CONTRACTOR'S NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**PRIMARY CONTACT:** \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_

Bid Due Date: Bid Opening Friday, November 20, 2020 at 3:00 p.m., local time
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## BIDDING REQUIREMENTS

### NOTICE TO BIDDERS

SEALED PROPOSALS for bidding on **Metroparks Toledo – Riverside Trail East, 1001 Front St., Toledo, Ohio 43608** will be received; opened; and read aloud at the Metropolitan Park District of the Toledo Area, Fallen Timbers Field Office, 6101 Fallen Timbers Lane, Maumee, Ohio 43537 **Friday, November 20, 2020 at 3:00 p.m.** local time.

THE SCOPE OF WORK consists of construction of a 12' wide x 0.68 mile asphalt bike path connection from Main Street to Marina Drive including a 110' x 20' pedestrian bridge over Main Street. General construction includes erosion control; storm drainage; asphalt and concrete pavement; segmental and cast-in-place concrete retaining walls; concrete bridge abutments; steel bridge with concrete deck; railings; landscape plantings, trellises & planters. Bidders may obtain copies of plans, specifications, contract documents and plan-holder's list through Newfax Corporation, 333 West Woodruff, Toledo, Ohio 43604 between 8:30 a.m. and 4:30 p.m., Monday through Friday (check made payable to Newfax Corporation) or via the Newfax Digital Plan Room at [www.newfaxcorp.com](http://www.newfaxcorp.com). Newfax can be contacted at 419-241-5157 or 800-877-5157. A non-refundable fee of \$40 is required for each set of full-size documents obtained. For additional information, please contact Jon Zvanovec @ 419-360-9184, [jon.zvanovec@metroparkstoledo.com](mailto:jon.zvanovec@metroparkstoledo.com).

COVID-19 UPDATE: In the event the office is not staffed to receive early, hand-delivered bids, bidders may drop off sealed bids to the aforementioned office address through the front door slot. Staff will be present at the Fallen Timbers Field Office for one hour prior to bid opening. If social distancing becomes problematic due to bid-opening turnout, the opening will be held outside or in an adjacent larger facility. Masks are required.

EACH BIDDER MUST FURNISH either (1) a bond for the full amount of the bid or (2) a certified check, cashier's check or irrevocable letter of credit in an amount equal to ten percent (10%) of the bid with its bid. The successful bidder must furnish a 100 percent (100%) Performance Bond and a 100 percent (100%) Labor and Materials Bond.

The bidder must be an Ohio Department of Transportation (ODOT) pre-qualified contractor. Pre-qualification status must be in force at the time of bid, at the time of award, and through the life of the construction contract.

The Disadvantaged Business Enterprise (DBE) goal for this project is minimum seven percent (7%).

No bidder may withdraw its bid within thirty (30) days after the actual date of the opening thereof.

THE BOARD OF PARK COMMISSIONERS OF THE METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA reserves the right to reject any or all bids, and to waive any informality in bidding.

By order of the Board of Park Commissioners  
METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA

\_\_\_\_\_  
David D. Zenk, Director

Published in <i>The Toledo Blade</i> on Friday, October 23 and Wednesday, October 28, 2020.
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## **BIDDING REQUIREMENTS**

### **DIVERSITY/EQUAL EMPLOYMENT OPPORTUNITY POLICY**



**METROPARKS  
TOLEDO**

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**TO:** ALL BIDDERS

**RE:** DIVERSITY POLICY

As a prospective bidder on this project, you are advised to contact the Director of Human Resources at the Metropolitan Park District of the Toledo Area at 5100 West Central Avenue, Toledo, Ohio 43615, or by telephone at (419) 407-9700 if you have any questions or need further information relative to compliance with the following Diversity Policy:

The Metropolitan Park District will participate in state and federal policies on non-discrimination and cooperate with contractors and unions in their compliance with applicable Equal Employment Opportunity laws and regulations during the construction of facilities in the park district. The Metropolitan Park District may require contractors working on park district projects to sign a Diversity Affidavit agreeing to practice non-discrimination on this project. Proof of compliance may be required by the park district. Non-compliance and violations will be reported to the appropriate state and federal agencies.

Contractors shall consider this memo a notification of the Metropolitan Park District's Diversity Policy and shall take appropriate action and comply with Title VII of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972). Contractors shall notify all sub-contractors and vendors receiving orders of \$2,000 or more that they are required to comply with the Metropolitan Park District's Diversity Policy.

Whenever possible, the Metropolitan Park District will not enter into an agreement with contractors, sub-contractors, vendors, or suppliers who are found not in compliance with the Equal Employment Opportunity Act as set forth by law in Title VII of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972).

## BIDDING REQUIREMENTS

### INSTRUCTIONS TO BIDDERS

#### 1. PROPOSALS

A. Sealed proposals are required. All proposals must be on the forms attached hereto and all forms provided herewith must be completed and submitted in order for the proposal to be considered. Forms must be returned in the documents with which they are bound. The sealed envelope must be clearly marked with the name of the bidder and project name as shown on the title page of the project manual. Proposals for bidding on **Metroparks Toledo – Riverside Trail East**, will be received by the Metropolitan Park District of the Toledo Area (the “Owner”), at the Fallen Timbers Field Office at 6101 Fallen Timbers Lane, Maumee, Ohio 43537 until **3:00 p.m., local time, Friday, November 20, 2020** and at that time and place will be publicly opened and read aloud.

B. All proposals must include the following completed and signed documents (the “Submitted Bid Documents”):

1. Bid Proposal Form;
2. Bid Guaranty & Contract Bond (or a certified check, cashier’s check or irrevocable letter of credit in an amount equal to 10% of the bid amount);
3. Hourly Wage Affidavit;
4. Non-Collusion Affidavit;
5. Contractor’s Questionnaire.

C. All blank spaces in the Submitted Bid Documents shall be filled in, in ink or typewritten, in words and figures, and in figures only where no space is provided for words, and signed by the bidder. The wording on the bid forms shall be used without change, alteration, or addition. Any change in the wording or omission of specified accompanying documents may cause the bid to be rejected. If both numbers and words are requested for any bid item, the amount in words shall prevail if there is an inconsistency between the numbers and words written.

#### 2. DESCRIPTION OF PROPOSED WORK

The proposed work consists of construction of a 12’ wide x 0.68 mile asphalt bike path connection from Main Street to Marina Drive including a 110’ x 20’ pedestrian bridge over Main Street. General construction includes erosion control; storm drainage; asphalt and concrete pavement; segmental and cast-in-place concrete retaining walls; concrete bridge abutments; steel bridge with concrete deck; railings; landscape plantings, trellises & planters (the “Project”). All work shown within the limits of work except where identified as not in contract (NIC) shall be the responsibility of the contractor.

## **INSTRUCTIONS TO BIDDERS - *continued***

### **3. LOCATION OF PROPOSED WORK**

The work specified herein is located at **1001 Front St., Toledo, Ohio 43608.**

### **4. ESTIMATE OF COST**

The total estimated construction cost for which bids are being solicited is:

Base Bid:	\$1,446,102.96	
Add Alternate 1:	\$70,000.00	Add Tree Forms on Bridge
Add Alternate 2:	\$40,000.00	Add Steel Planters
Add Alternate 3:	\$147,753.70	Add East Staircase
Add Alternate 4:	\$99,418.00	Add West Staircase
Add Alternate 5:	\$120,000.00	Add Arched Trellis

### **5. CONTRACT DOCUMENTS**

The Contract Documents consist of the following documents:

1. Project Manual Title Page
2. Table of Contents
3. Notice to Bidders
4. Affirmative Action Policy
5. Instructions to Bidders
6. Bid Proposal Form
7. Bid Guaranty and Contract Bond Form
8. Contractor Questionnaire
9. Hourly Wage Rate Affidavit
10. Non-Collusion Affidavit
11. Personal Property Tax Affidavit (R.C. § 5719.042)
12. Workers' & Unemployment Compensation Affidavit
13. Affirmative Action Affidavit
14. Performance Bond
15. Labor and Materials Payment Bond
16. Prevailing Wage Agreement
17. Site Policies and Procedures
18. Contract between Owner and Contractor
19. General Conditions of the Contract
20. Special Conditions
21. Location Map
22. Project Specifications
23. Project Drawings
24. Addenda
25. State of Ohio, Department of Transportation "Construction and Materials Specifications" current edition, together with all supplements and revisions thereto in effect fourteen (14) days prior to the opening of bids, if applicable.



## **INSTRUCTIONS TO BIDDERS - *continued***

### **6. BID DOCUMENTS**

Bidders may obtain copies of plans, specifications, contract documents and plan-holder's list through Newfax Corporation, 333 West Woodruff, Toledo, Ohio 43604 between 8:30 a.m. and 4:30 p.m., Monday through Tuesday (check made payable to Newfax Corporation) or via the Newfax Digital Plan Room at [www.newfaxcorp.com](http://www.newfaxcorp.com). Newfax can be contacted at 419-241-5157 or 800-877-5157. A non-refundable fee of \$40 is required for each set of documents obtained. For additional information, please contact Jon Zvanovec @ 419-360-9184, [jon.zvanovec@metroparkstoledo.com](mailto:jon.zvanovec@metroparkstoledo.com).

### **7. BID BOND**

Each bid must contain the name and address of every person, firm or corporation interested herein, along with a description of the official status of each person, firm or corporation; and shall be accompanied by either (1) a bond for the full amount of the bid in the form of the Bid Guaranty and Contract Bond included in the Bid Documents; or (2) certified check, cashier's check or irrevocable letter of credit in an amount equal to ten percent (10%) of the bid which shall be held as a guarantee that, if the proposal is accepted, a contract will be entered into. The bid deposits of all except the three (3) lowest bidders will be returned within three (3) days after the opening of the bids. The bid deposits of the three (3) lowest bidders will be returned within three (3) days after the execution of the contract and final approval of the required bonds by the Owner.

### **8. BIDDERS TO INFORM THEMSELVES**

Bidders are expected to examine the plans and specifications with care and to inform themselves fully of the conditions affecting the proposed construction. Bidders shall examine the construction site and ascertain all conditions affecting the execution of the work. The plans show the existing surface and underground structures likely to be encountered or to affect the proposed construction insofar as they have been determined, but the information shown is not guaranteed as to either correctness or completeness. Each bidder is expected to judge on their own all the factors affecting the cost of the work and time required for its completion, including sub-soil condition. Submission of a bid shall be construed by the Owner as an agreement by the bidder to carry out the work in full conformance with the specifications and other contract documents, notwithstanding the existing conditions.

### **9. REVIEW OF FACILITIES**

Bidders are encouraged to visit the project site during normal park hours of dawn 'til dusk so they may see the scope of work and the site conditions that should be considered in submitting bids. Site visitors must respect trail neighbors by limiting vehicle usage and noise within and adjacent to construction limits. Site visitors must be courteous and professional in all dealings with neighbors.

### **10. INTERPRETATION OF PLANS AND SPECIFICATIONS/ADDENDA**

A. The Owner reserves the right to issue Addenda changing, altering, or supplementing the Contract Documents prior to the time set for receiving bids.

## **INSTRUCTIONS TO BIDDERS - *continued***

B. If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the plans, specifications or other proposed contract documents, he may submit to the Metropolitan Park District of the Toledo Area, 5100 West Central Avenue, Toledo, Ohio 43615, a written request for interpretation thereof. The person submitting the request shall be responsible for its prompt delivery. Questions relating to the Bid Documents must be submitted in writing and received by the Owner no later than seventy-two (72) hours prior to the Bid Opening. Any interpretations of the proposed documents will be made only by Addendum duly issued and a copy of such Addendum will be mailed or delivered to each person receiving a set of such documents; said Addendum will bear the signature of approval of the Metropolitan Park District of the Toledo Area. Failure of any bidder to receive any such Addendum shall not relieve that bidder from any obligation of his bid as submitted.

C. Any explanation, interpretation, correction, or modification of the Bid Documents will be issued in writing in the form of an Addendum executed by the Owner, which shall be the only means considered binding. The Metropolitan Park District will not be responsible for or bound by any other explanation or interpretation of such documents that any person presumes to make. All Addenda shall become a part of the Contract Documents.

D. If any addendum to the plans or contract documents is issued within 72 hours prior to the scheduled bid opening, as stated in the advertisement for bids, the time for opening the bids shall be extended for a period of one (1) week, without further advertising for bids.

### **11. UNSOLICITED ALTERNATE BIDS/QUALIFYING STATEMENTS**

Unsolicited alternate bids will not be considered in awarding this contract. The inclusion of any such unsolicited alternates will result in a bid being considered informal and liable to rejection. Bidders shall not add any conditions or qualifying statements to the bid as the bid may be declared irregular as being not responsive to the Notice to Bidders.

### **12. CONTRACTOR PRE-QUALIFICATION**

The bidder must be an Ohio Department of Transportation (ODOT) pre-qualified contractor. Pre-qualification status must be in force at the time of bid, at the time of award, and through the life of the construction contract.

### **13. DISADVANTAGED BUSINESS PARTICIPATION**

The Disadvantaged Business Enterprise (DBE) goal for this project is minimum seven percent (7%). Contractors bidding on this project must make a good faith effort to ensure that small business, minority owned firms, and women's business enterprises have the opportunity to participate in the project. Bidders and the contractor awarded the work may be required to provide documentation as may be required to document the affirmative measures that have been used to provide small businesses, minority owned firms, and women's business enterprises opportunities to participate.

### **14. METHOD OF AWARD**

A. Award. Following the opening and tabulation of bids, the Metropolitan Park District will determine which bid is most favorable to and in the best interests of the Metropolitan Park District. The award of the contract will be made to the bidder with the lowest bid who meets the requirements of the Contract Documents and who is deemed by the Metropolitan Park

## **INSTRUCTIONS TO BIDDERS - *continued***

District to be fully capable of completing the work in accordance with the plans and specifications and within the time frame indicated by the bidder on the Proposal Form. The Owner, in its sole discretion, shall determine whether a bid is responsive and a bidder is fully capable of completing the work in accordance with the foregoing.

B. Right to Reject. The Owner reserves the right to reject any, part of any, or all bids and to waive any informalities and irregularities. The bidder expressly acknowledges this right of the Owner to reject any or all bids, or to reject any incomplete or irregular bid. The Owner will award a single contract for each of the bid packages listed above or one or more combined contracts for combinations of the bid packages. Bidders must furnish all information requested on or accompanying the Bid Form. Failure to do so may result in disqualification of the bid.

C. Determination of Lowest Responsible Bid. Subject to the right of the Owner to reject any or all bids, the Owner will award the Contract for the Work to the bidder submitting the lowest responsible bid, taking into consideration accepted alternates. The Owner, in its sole discretion, shall determine whether a bid or bidder is responsible. In evaluating bids, the Owner shall consider the qualifications of the bidders, whether or not the bids comply with the prescribed requirements, and alternative and unit prices, if requested, on the Bid Form. The Owner may also consider the qualifications and experience of suppliers and distributors. The Owner may conduct such investigations as are deemed necessary to establish the responsibility, qualifications and financial ability of the bidders, proposed distributors and material suppliers, and other persons and organizations to do the Work in accordance with the Contract Documents to the Owner's satisfaction within the prescribed time. The Owner reserves the right to reject the bid of any bidder that does not pass the evaluation to the Owner's satisfaction. The factors to be considered by the Owner in making its determination as to whether the Bidder is a responsible bidder, include, but are not limited to, the following as the Owner, in its discretion, deems appropriate and may give such weight thereto as it deems appropriate:

a. The bidder should have a record of consistent customer satisfaction and of consistent completion of projects, including projects that are comparable to or larger and more complex than the Owner's Project, on time and in accordance with the applicable Contract Documents. If the bidder's management operates or has operated another construction company, the Owner may consider the work history of that company in determining responsibility of the bidder.

The bidder authorizes the Owner and its representatives to contact the owners and design professionals (and construction managers, if applicable) on projects on which the bidder has worked, and authorizes and requests such owners and design professionals (and construction managers) to provide the Owner with a candid evaluation of the bidder's performance. By submitting its bid, the bidder agrees that if it or any person, directly or indirectly, brings an action against any of such owners or design professionals (or construction manager) or the employees of any of them as a result of or related to such candid evaluation and such action is not successful, the bidder will reimburse such owners, design professionals (and construction managers), and the employees of each of them for all legal fees and expenses incurred by them related to such legal action. This obligation is expressly intended for the benefit of such owners, design professionals (and construction managers), and the employees of each of them;

## **INSTRUCTIONS TO BIDDERS - *continued***

- b. The bidder's financial ability to complete the Contract successfully and on time without resort to its Surety;
- c. The bidder's prior experience with similar work on comparable or more complex projects; the bidder should be in the business and regularly engaged in the type of construction specified for the bid package for which it submits a bid for a minimum period of three (3) years and be properly licensed in the jurisdiction where the Project is constructed; in addition, the bidder must show that it is able to provide through either an in-house or outside consultant a registered design professional to sign and seal the final Drawings that the Contractor must prepare for the Project;
- d. The bidder's prior history for the successful and timely completion of projects;
- e. The bidder's equipment and facilities;
- f. The adequacy, in numbers and experience, of the bidder's work force to complete the Contract successfully and on time, and the bidder's in-house design professional or consultant for completing the design of the project for installation, including systems, and stamping drawings needed to submit for plan approvals and building permits;
- g. The bidder's prior experience on other projects of the Owner, including the bidder's demonstrated ability to complete its work on these projects in accordance with the Contract Documents and on time and its ability to work with the Owner;
- h. The bidder's compliance with federal, state, and local laws, rules and regulations, including but not limited to the Occupational Safety and Health Act;
- i. The bidder's participation in a drug-free workplace program acceptable to the Owner, and the bidder's record for both resolved and unresolved findings for recovery as defined in Ohio Revised Code Section 7.24;
- j. The Owner's prior experience with the bidder's surety;
- k. The bidder's ability to meet scheduling requirements;
- l. Depending upon the type of work, other essential factors, as the Owner may determine and as are included in the specifications for the Work; and/or
- m. The foregoing information with respect to each of the Subcontractors which the Contractor intends to use on the Project.

### **15. REJECTION OF BIDS**

Failure to provide the requested information when the bid is submitted shall be sufficient cause for the rejection of the bid or any part of the bid. The Metropolitan Park District reserves the right to reject any and all bids when, in the best interests of the Metropolitan Park District, it is deemed advisable to do so and to waive any irregularities and informalities.

## **INSTRUCTIONS TO BIDDERS - continued**

### **16. AWARD OF CONTRACT**

The Metropolitan Park District reserves the right to accept any bid for the work contemplated herein at any time within a period of 30 days after the opening of bids.

### **17. WITHDRAWAL OF BIDS**

Any bidder may withdraw his bid at any time prior to the scheduled time for opening bids, but not for a period of 30 days thereafter, except as provided by law.

### **18. CHANGES**

The Contractor shall not accept verbal orders or instructions for additions, changes, or deletions to bid specifications that will incur compensation above the Contractor's fixed price base bid. There shall be no "final settlement" for changes or additional work at the end of the project.

### **19. COMPETENCY OF BIDDERS**

The low bidder shall be prepared to furnish a financial statement and an experience record, if so directed. The above documents, if required, will be kept confidential. In addition, before the contract is awarded, the low bidder must be prepared to discuss his proposed methods of construction, his program for carrying out the work, and the equipment he proposes to employ.

### **20. FORFEITURE OF BID DEPOSIT**

The person, firm or corporation to which the contract is awarded shall be required to execute and provide all required documents within ten (10) days after written notice of such contract award is made by the Metropolitan Park District. In default thereof, the deposit accompanying his proposal shall be forfeited and retained by the Metropolitan Park District as liquidated damages for any expense or delay which may be incurred in making another award for the performance of the work contemplated herein, and to indemnify the Metropolitan Park District for any loss which it may sustain by failure of the bidder to execute the contract and furnish the required bond.

In the event of the default and forfeiture described herein, the Metropolitan Park District may either re-advertise the work or award the contract to the next lowest bidder (as the Metropolitan Park District may deem advisable).

### **21. ADDITIONAL SECURITY**

In every case where a bond is required, should the surety company thereon, in the opinion of Metropolitan Park District officials, become unacceptable as a surety at any time prior to the completion of this contract, the contractor must promptly furnish replacement surety as the said Metropolitan Park District officials may from time to time require in order to protect the interests of the Metropolitan Park District as well as persons supplying labor and materials to the contractor.

### **22. BONDS**

All bonds must be issued by a surety company authorized by the Ohio Department of Insurance to transact business in the State of Ohio and acceptable to the Owner. The bond must be issued by a surety capable of demonstrating a record of competent underwriting,

## **INSTRUCTIONS TO BIDDERS - continued**

efficient management, adequate reserves, and sound investments. These criteria will be deemed to be met if the surety currently has an A.M. Best Company Policyholders Rating of "A-" or better and has or exceeds the Best Financial Size Category of Class VI. Other sureties may be acceptable to the Owner, in its sole discretion.

### **23. DATE FOR COMPLETION / LIQUIDATED DAMAGES**

A. Date for Substantial Completion. Each successful bidder shall have its work on the project substantially completed (as "Substantial Completion" is defined in the Contract Documents) by **Sunday, October 31, 2021** (the "Date for Substantial Completion"). The Date for Substantial Completion may be extended only by Change Order or other modification signed by the Park District. By submitting its bid, the bidder agrees that the period for performing the work is reasonable.

B. Liquidated Damages. If the successful bidder does not have its work on the project substantially completed by the Date for Substantial Completion, the Owner shall be entitled to recover from or setoff from amounts due the successful bidder, as Liquidated Damages, and not as a penalty, the amounts set forth in the applicable table included in the contract between the bidder and the Owner for each and every calendar day beyond the Date of Substantial Completion that the contractor's work is not Substantially Complete. In addition to such Liquidated Damages, the bidder shall indemnify, defend and hold the Owner and its employees, officers, directors and trustees harmless from any and all claims, whether or not such claims are proven, and from all costs and expenses incurred as a result of such claims, including but not limited to attorneys' and consultants' fees and expenses, provided such claims arise out of or are related to the bidder's failure to achieve Substantial Completion of its work by the Date for Substantial Completion.

C. Acknowledgement. The bidder acknowledges, by submitting its bid for the work and entering into a contract with the Owner to perform the work, that such amounts of Liquidated Damages represent a reasonable estimate of the actual damages for loss of and/or interference with the intended use of the project that the Owner would incur if the work is not Substantially Complete by the Date for Substantial Completion.

### **24. PREVAILING WAGE**

Pursuant to Ohio Revised Code Section 4115.03 et seq., the Project requires all contractors and subcontractors to pay prevailing wages as defined under Ohio law.

### **25. EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION**

A. Minority, female, and disadvantaged businesses will be afforded full opportunity to submit bids, and bidders will not be discriminated against on the grounds of race, color, religion, sex, age, handicap, ancestry, or national origin in the consideration of an award. The successful bidder(s) shall include a provision in any subcontract entered into for the Project that requires that each of its subcontractors not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, age, handicap, ancestry, or national employment in any actions that it takes. Such actions include, without limitation, employment, upgrading, demotion, transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships.

## **INSTRUCTIONS TO BIDDERS - *continued***

B. The Contract to be executed by the successful Bidder contains nondiscrimination provisions as required by Ohio Revised Code Sections 153.59 and 153.60.

### **26. EXECUTION OF CONTRACT**

A. Within seven (7) calendar days of the Award of the Contract, or such other time designated by the Owner, the successful bidder shall execute and deliver to the Owner the required number of the following documents:

- a. The Contract between Owner and Contractor;
- b. Performance Bond;
- c. Labor and Materials Payment Bond;
- d. Valid Workers' Compensation Certificate;
- e. Insurance Certificates;
- f. Personal Property Tax Affidavit;
- g. Workers' & Unemployment Compensation Affidavit;
- h. Affirmative Action Affidavit;
- i. Prevailing Wage Rate Agreement (if applicable);
- j. Work Site Policies and Procedures;
- k. Project Labor Agreement;
- j. Any other documents identified in the Contract Documents for submission with the signed agreement

### **27. PROJECT LABOR AGREEMENT ("PLA")**

A Project Labor Agreement will be entered into by the successful bidder with the Northwest Ohio Building and Construction Trades Council for the Work on the Project. The Project Labor Agreement shall be substantially similar to the agreement attached as Exhibit A.

# PROPOSAL

## BID PROPOSAL FORM

TO: Metropolitan Park District of the Toledo Area  
5100 West Central Avenue, Toledo, OH 43615

### BID PROPOSAL

Pursuant to the advertisement for bids for **Metroparks Toledo – Riverside Trail East**, the undersigned having familiarized themselves with the local conditions affecting the cost of the work and with the Contract Documents, including Notice to Bidders, Instructions to Bidders, Bid Form, Contract Form, Form of Bonds, Plans, Specifications, Affidavits, Exhibits, and Addenda issued and attached to the specifications on file in the office of the Metropolitan Park District of the Toledo Area, hereby proposes to perform everything required to be performed and to provide and furnish all the labor, materials, necessary tools, expendable equipment, insurance, utilities, transportation and other services necessary to perform all of the work required for the completion of the Project component identified below, in accordance with the Plans, Specifications and Addenda Nos. \_\_\_\_\_ issued thereto:

### BASE BID:

This bid is for the BASE BID component of the Project: **Metroparks Toledo – Riverside Trail East**, The BASE BID amount for all work for this component, as shown on the drawings and specifications, shall be completed for:

THE TOTAL BASE BID AMOUNT \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_).



## **BID PROPOSAL FORM - continued**

### **BASE BID UNIT PRICES: Basis of payment for construction work.**

The following unit prices are submitted as basis of payment for ODOT pay items related to this Congestion Mitigation and Air Quality (CMAQ) – grant funded work. The unit price shall be complete including all labor, materials, necessary tools, expendable equipment, insurance, utilities, transportation, and other services necessary to perform the work required for completion of said construction.

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
<b>EROSION CONTROL</b>					
201E11000	CLEARING AND GRUBBING	1	LS	\$	\$
832E30000	EROSION CONTROL	1	EA	\$	\$
832E15000	STORM WATER POLLUTION PREVENTION PLAN	1	LS	\$	\$
<b>TOTAL EROSION CONTROL</b>				<b>\$</b>	
<b>DRAINAGE</b>					
605E06000	4" BASE PIPE UNDERDRAINS	324	FT	\$	\$
611E00100	4" CONDUIT, TYPE B	60	FT	\$	\$
611E04900	12" CONDUIT, TYPE B	55	FT	\$	\$
611E98651	CATCH BASIN, FRAME AND GRATE, AS PER PLAN	1	EA	\$	\$
839E30100	TRENCH DRAIN WITH PEDESTRIAN GRATE	30	FT	\$	\$
611E98631	CATCH BASIN, ADJUSTED TO GRADE, AS PER PLAN	2	EA	\$	\$
<b>TOTAL DRAINAGE</b>				<b>\$</b>	
<b>PAVEMENT</b>					
203E10000	EXCAVATION	2144	CY	\$	\$
203E20000	EMBANKMENT	3045	CY	\$	\$
203E35110	GRANULAR MATERIAL, TYPE B	930	CY	\$	\$
204E10000	SUBGRADE COMPACTION	5792	SY	\$	\$
204E45000	PROOFROLLING	8	HR	\$	\$
204E50001	GEOTEXTILE FABRIC, AS PER PLAN	58	SY	\$	\$
203E98000	GEOFOAM FILL	260	CY	\$	\$
304E20000	AGGREGATE BASE	1488	CY	\$	\$
407E10001	TACK COAT, AS PER PLAN	175	GAL	\$	\$

## **BID PROPOSAL FORM - continued**

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
410E14001	TRAFFIC COMPACTED SURFACE, AS PER PLAN	73	CY	\$	\$
441E50000	ASPHALT CONCRETE SURFACE COURSE, TYPE 1, (448), PG64-22	122	CY	\$	\$
441E50300	ASPHALT CONCRETE INTERMEDIATE COURSE, TYPE 2, (448), PG64-22	171	CY	\$	\$
451E10010	6" REINFORCED CONCRETE PAVEMENT, CLASS QC 1P	100	SY	\$	\$
452E09010	4" NON-REINFORCED CONCRETE PAVEMENT, CLASS QC 1P	380	SY	\$	\$
452E10010	6" NON-REINFORCED CONCRETE PAVEMENT, CLASS QC 1P	148	SY	\$	\$
SPECIAL 607E40000	VANDAL PROTECTION FENCE, SS MESH, AS PER PLAN	200	SF	\$	\$
SPECIAL 690E98100	42" HT. GUARDRAIL	322	FT	\$	\$
SPECIAL 690E50600	BOLLARD, FIXED BOLLARD	5	EA	\$	\$
<b>TOTAL PAVEMENT</b>				<b>\$</b>	
<b>LANDSCAPING</b>					
659E00301	TOPSOIL, AS PER PLAN	467	CY	\$	\$
659E10001	SEEDING AND MULCHING, AS PER PLAN, LOW-MOW FESCUE SEED MIX	1310	SY	\$	\$
659E15000	INTER-SEEDING	66	SY	\$	\$
659E31000	LIME	0.27	ACRE	\$	\$
659E20000	COMMERCIAL FERTILIZER	0.18	TON	\$	\$
659E35000	WATER	8	MGAL	\$	\$
<b>TOTAL LANDSCAPE</b>				<b>\$</b>	

## **BID PROPOSAL FORM – continued**

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
<b>RETAINING WALLS</b>					
511E46211	CLASS QC1 CONCRETE, RETAINING/WINGWALL, INCLUDING FOOTING, AS PER PLAN	222	CY	\$	\$
870E10001	PREFABRICATED MODULAR RETAINING WALL, AS PER PLAN	3242	SF	\$	\$
518E21201	POROUS BACKFILL WITH GEOTEXTILE FABRIC, AS PER PLAN	110	CY	\$	\$
<b>TOTAL RETAINING WALLS</b>				<b>\$</b>	
<b>STRUCTURE OVER 20 FOOT SPAN</b>					
511E34445	CLASS QC2 CONCRETE, BRIDGE DECK, AS PER PLAN	45	CY	\$	\$
511E43511	CLASS QC1 CONCRETE, ABUTMENT INCLUDING FOOTING, AS PER PLAN	168	CY	\$	\$
507E00400	STEEL PILES MISC., HP 10x49, FURNISHED	1960	LF	\$	\$
507E00400	STEEL PILES MISC., HP 10x49, DRIVEN	1960	LF	\$	\$
607E98300	VANDAL PROTECTION FENCE, SS MESH, AS PER PLAN	2872	SF	\$	\$
SPECIAL 690E98100	42" HT. GUARDRAIL, NO INFILL PANEL, AS PER PLAN	222	FT	\$	\$
SPECIAL 530E00200	STRUCTURES, UNLOADING, ASSEMBLY AND INSTALLATION OF PEDESTRIAN BRIDGE	1	LS	\$	\$
SPECIAL 900E11000	PREFAB PEDESTRIAN BRIDGE, BASE DESIGN	1	LS	\$	\$
<b>TOTAL STRUCTURE OVER 20 FOOT SPAN</b>				<b>\$</b>	

**BID PROPOSAL FORM – continued**

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
<b>INCIDENTALS</b>					
202E38001	GUARDRAIL REMOVED, AS PER PLAN	60	FT	\$	\$
202E23001	PAVEMENT REMOVED, AS PER PLAN	171	SY	\$	\$
614E11001	MAINTAINING TRAFFIC, AS PER PLAN	1	LS	\$	\$
614E12421	DETOUR SIGNING, AS PER PLAN	1	LS	\$	\$
623E10000	CONSTRUCTION LAYOUT STAKES AND SURVEYING	1	LS	\$	\$
624E10000	MOBILIZATION	1	LS	\$	\$
<b>TOTAL INCIDENTALS</b>				<b>\$</b>	
<b>TOTAL BASE BID (TO EQUAL BASE BID)</b>				<b>\$</b>	

The work shall be completed by (date) \_\_\_\_\_, in accordance with the Instructions to Bidders.

Accompanying this proposal is a (\_\_\_) certified check, (\_\_\_) cashier's check, (\_\_\_) irrevocable letter of credit, (\_\_\_) surety bond in the amount of:

\_\_\_\_\_ payable to the Metropolitan Park District of the Toledo Area which is to be forfeited to same if the undersigned fails to execute the contract in conformity with the Contract Form incorporated in the Contract Documents and furnish bond as specified within ten (10) days after notification of the award of contract to the undersigned.

## **BID PROPOSAL FORM – continued**

### **ALTERNATE ONE: ADD TREE FORMS ON BRIDGE**

This bid is for the ALTERNATE ONE component of the Project: **LUC – Riverside Trail East – PID 107480**. The ALTERNATE ONE amount for all work for this component, as shown on the drawings and specifications, shall be completed for:

THE TOTAL ALTERNATE ONE AMOUNT \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_).

### **ALTERNATE ONE: ADD TREE FORMS ON BRIDGE**

#### **ALTERNATE ONE UNIT PRICES: Basis of payment for construction work.**

The following unit prices are submitted as basis of payment for ODOT pay items related to this Congestion Mitigation and Air Quality (CMAQ) – grant funded work. The unit price shall be complete including all labor, materials, necessary tools, expendable equipment, insurance, utilities, transportation, and other services necessary to perform the work required for completion of said construction.

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
SPECIAL 900E17000	PREFAB PEDESTRIAN BRIDGE, TREE FORMS	1	LUMP	\$	\$
<b>TOTAL ALTERNATE ONE (TO EQUAL ALTERNATE ONE BID)</b>				<b>\$</b>	

## **BID PROPOSAL FORM – continued**

### **ALTERNATE TWO: ADD STEEL PLANTERS ON BRIDGE**

This bid is for the ALTERNATE TWO component of the Project: **LUC – Riverside Trail East – PID 107480**. The ALTERNATE TWO amount for all work for this component, as shown on the drawings and specifications, shall be completed for:

THE TOTAL ALTERNATE TWO AMOUNT \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_).

### **ALTERNATE TWO: ADD STEEL PLANTERS ON BRIDGE**

#### **ALTERNATE TWO UNIT PRICES: Basis of payment for construction work.**

The following unit prices are submitted as basis of payment for ODOT pay items related to this Congestion Mitigation and Air Quality (CMAQ) – grant funded work. The unit price shall be complete including all labor, materials, necessary tools, expendable equipment, insurance, utilities, transportation, and other services necessary to perform the work required for completion of said construction.

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
SPECIAL 900E17000	STEEL PLANTERS	1	LUMP	\$	\$
<b>TOTAL ALTERNATE TWO (TO EQUAL ALTERNATE TWO BID</b>				<b>\$</b>	

## **BID PROPOSAL FORM – continued**

### **ALTERNATE THREE: ADD EAST STAIRCASE TO BRIDGE**

This bid is for the ALTERNATE THREE component of the Project: **LUC – Riverside Trail East – PID 107480**. The ALTERNATE THREE amount for all work for this component, as shown on the drawings and specifications, shall be completed for:

THE TOTAL ALTERNATE THREE AMOUNT \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_).

### **ALTERNATE THREE: ADD EAST STAIRCASE TO BRIDGE**

#### **ALTERNATE THREE UNIT PRICES: Basis of payment for construction work.**

The following unit prices are submitted as basis of payment for ODOT pay items related to this Congestion Mitigation and Air Quality (CMAQ) – grant funded work. The unit price shall be complete including all labor, materials, necessary tools, expendable equipment, insurance, utilities, transportation, and other services necessary to perform the work required for completion of said construction.

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
<b>DEDUCT</b>					
690E98100	42" HT. GUARDRAIL	-47	FT	\$( )	\$( )
<b>ADD</b>					
203E10000	EXCAVATION	9	CY	\$	\$
203E20000	EMBANKMENT	178	CY	\$	\$
204E10000	SUBGRADE COMPACTION	59	SY	\$	\$
304E20000	AGGREGATE BASE	10	CY	\$	\$
452E09010	4" NON-REINFORCED CONCRETE PAVEMENT, CLASS QC 1P	4	SY	\$	\$
511E46211	CLASS QC1 CONCRETE, RETAINING/WINGWALL INCLUDING FOOTING, AS PER PLAN	280	CY	\$	\$
608E40001	CONCRETE STEPS, TYPE A, AS PER PLAN	240	FT	\$	\$
690E98100	HANDRAIL	70	FT	\$	\$
690E98100	42" HT. GUARDRAIL	34	FT	\$	\$

**BID PROPOSAL FORM – continued**

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
690E98100	66" HT. GUARDRAIL	38	FT	\$	\$
SPECIAL 690E50600	BOLLARD, FIXED BOLLARD	2	EA	\$	\$
<b>TOTAL ALTERNATE THREE (TO EQUAL ALTERNATE THREE BID)</b>				\$	

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**ALTERNATE FOUR: ADD WEST STAIRCASE TO BRIDGE**

This bid is for the ALTERNATE FOUR component of the Project: **LUC – Riverside Trail East – PID 107480**. The ALTERNATE FOUR amount for all work for this component, as shown on the drawings and specifications, shall be completed for:

THE TOTAL ALTERNATE FOUR AMOUNT \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_).

**ALTERNATE FOUR: ADD WEST STAIRCASE TO BRIDGE****ALTERNATE FOUR UNIT PRICES: Basis of payment for construction work.**

The following unit prices are submitted as basis of payment for ODOT pay items related to this Congestion Mitigation and Air Quality (CMAQ) – grant funded work. The unit price shall be complete including all labor, materials, necessary tools, expendable equipment, insurance, utilities, transportation, and other services necessary to perform the work required for completion of said construction.

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
<b>DEDUCT</b>					
690E98100	42" HT. GUARDRAIL	-27	FT	\$( )	\$( )
<b>ADD</b>					
203E10000	EXCAVATION	8	CY	\$	\$
203E20000	EMBANKMENT	61	CY	\$	\$
204E10000	SUBGRADE COMPACTION	174	SY	\$	\$



**BID PROPOSAL FORM – continued**

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
304E20000	AGGREGATE BASE	29	CY	\$	\$
452E09010	4" NON-REINFORCED CONCRETE PAVEMENT, CLASS QC 1P	120	SY	\$	\$
511E46211	CLASS QC1 CONCRETE, RETAINING/WINGWALL INCLUDING FOOTING, AS PER PLAN	155	CY	\$	\$
608E40001	CONCRETE STEPS, TYPE A, AS PER PLAN	234	FT	\$	\$
690E98100	HANDRAIL	57	FT	\$	\$
690E98100	42" HT. GUARDRAIL	50	FT	\$	\$
690E98100	66" HT. GUARDRAIL	18	FT	\$	\$
SPECIAL 690E50600	BOLLARD, FIXED BOLLARD	1	EA	\$	\$
<b>TOTAL ALTERNATE FOUR (TO EQUAL ALTERNATE FOUR BID</b>				<b>\$</b>	

## **BID PROPOSAL FORM – continued**

### **ALTERNATE FIVE: ADD ARCHED TRELLIS**

This bid is for the ALTERNATE FIVE component of the Project: **LUC – Riverside Trail East – PID 107480**. The ALTERNATE FIVE amount for all work for this component, as shown on the drawings and specifications, shall be completed for:

THE TOTAL ALTERNATE FIVE AMOUNT \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_).

### **ALTERNATE FIVE: ADD ARCHED TRELLIS**

#### **ALTERNATE FIVE UNIT PRICES: Basis of payment for construction work.**

The following unit prices are submitted as basis of payment for ODOT pay items related to this Congestion Mitigation and Air Quality (CMAQ) – grant funded work. The unit price shall be complete including all labor, materials, necessary tools, expendable equipment, insurance, utilities, transportation, and other services necessary to perform the work required for completion of said construction.

ITEM #	DESCRIPTION	QTY	UNIT	PRICE PER UNIT	TOTAL
SPECIAL 900E11000	ARCHED TRELLIS	2	EA	\$	\$
<b>TOTAL ALTERNATE FIVE (TO EQUAL ALTERNATE FIVE BID)</b>				<b>\$</b>	

# **PROPOSAL**

## **BIDDER CERTIFICATION**

The Bidder hereby acknowledges that the following representations in this Bid Proposal are material and not mere recitals:

Bidder has read and understands the Contract Documents and agrees to comply with all requirements of the Contract Documents, regardless of whether the Bidder has actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.

The Bidder represents that the bid is based upon the standards specified by the Contract Documents.

Bidder has visited the Project Site, become familiar with local conditions and has correlated personal observations with the requirements of the Contract Documents. The Bidder has no outstanding questions regarding the interpretation or clarification of the Contract Documents.

Bidder understands that the award of separate contracts for the Project will require sequential, coordinated and interrelated operations which may involve interference, disruption, hindrance or delay in the progress of the Bidder's Work. The Bidder agrees that the Contract price, as amended from time to time by Change Order, shall cover all amounts due from the Owner resulting from interference, disruption, hindrance or delay caused by or between contractors or their agents and employees. The Bidder agrees that any such interference, disruption, hindrance or delay is within the contemplation of the Bidder and the Owner and that the Contractor's sole remedy for such interference, disruption, hindrance or delay shall be an extension of time in accordance with the Contract Documents. This provision is intended to be, and shall be construed as, consistent with and not in conflict with, Section 4113.62, ORC to the fullest extent permitted.

Bidder and each person signing on behalf of the Bidder certifies, and in the case of a joint or combined bid, each party thereto certifies as to such party's entity, under penalty of perjury, that to the best of the undersigned's knowledge and belief: (a) the Base Bid, any Unit Prices and any Alternate Bid in the bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such Base Bid, Unit prices or Alternate Bid with any other Bidder; (b) unless otherwise required by law, the Base Bid, any Unit Prices and any Alternate Bid in the bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the bid opening, directly or indirectly, to any other Bidder who would have any interest in the Base Bid, Unit Prices or Alternate bid; and (c) no attempt has been made or will be made by the Bidder to induce any other individual, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Bidder certifies that upon the award of a Contract, the Contractor will make a good faith effort to ensure that all of the Contractor's employees, while working on the site of the Project, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

Bidder agrees to furnish any information requested by the Owner to evaluate the responsibility of the Bidder.

## **BIDDER CERTIFICATION - *continued***

The Contractor acknowledges that all Work shall be completed within the time established in the Contract Documents, and that each applicable portion of the Work shall be completed upon the respective milestone completion dates, unless an extension of time is granted in accordance with the Contract Documents. Each bid shall contain the name of every person interested therein. If the Bidder is a corporation, partnership, sole proprietorship, or limited liability company, an officer, partner or principal of the Bidder, as applicable, shall print or type the legal name of the Bidder on the line provided and sign the Bid Form. If the Bidder is a joint venture, an officer, partner or principal, as applicable, of each member of the joint venture shall print or type the legal name of the applicable member on the line provided and sign the Bid Form.

In submitting this bid, it is understood that the Metropolitan Park District reserves the right to reject any and all bids. It is agreed that this bid may not be withdrawn for a period of 30 days from the opening date thereof, except as provided by law.

If a Contract is awarded on the basis of this bid, and if the Bidder does not execute a Contract for any reason, other than as authorized by law, the Bidder and the Bidder's Surety are liable to the Owner as provided in the Instructions to Bidders. If awarded a contract under this proposal, the undersigned hereby agrees to sign, acknowledge and deliver the Contract and any and all bonds required hereunder within ten (10) days after receipt of the Contract Form.

BIDDER'S NAME (Print): \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: (    ) \_\_\_\_\_

Facsimile Number: (    ) \_\_\_\_\_

Where Incorporated/Organized: \_\_\_\_\_

Type of Business (circle one):      Limited Liability Company      Corporation  
Partnership      Sole Proprietorship

Federal Identification Number: \_\_\_\_\_

Contact Person for Contract Processing: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

# PROPOSAL

## BID GUARANTY & CONTRACT BOND

(To be executed by Bidder and Surety before submitting a bid.)

(Certified check, cashier's check, or letter of credit for 10% of bid may be submitted in lieu of Bid Guaranty.)

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,

\_\_\_\_\_  
(Name and address of Principal)  
as principal and \_\_\_\_\_

\_\_\_\_\_  
(Name and address of Surety)  
as sureties, are held and firmly bound onto the Metropolitan Park District of the Toledo Area and the Ohio Department of Transportation as obligees in the penal sum of the dollar amount of the bid submitted by the principal to the obligees on \_\_\_\_\_ to undertake the project known as:  
(Date)

\_\_\_\_\_ (the "Project").

The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate bids made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of:

\_\_\_\_\_ dollars (\$ \_\_\_\_\_).

(If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the bid including alternates, in dollars and cents. A percentage is not acceptable.)

For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above named principal has submitted a bid for:

\_\_\_\_\_  
\_\_\_\_\_  
NOW, THEREFORE, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the

## **BID GUARANTY & CONTRACT BOND – continued**

bid; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal will pay to the obligee the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect. If the obligee accepts the bid of the principal and the principal within ten (10) days after the awarding of the contract, enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein; and

Now also, if the said principal shall well and faithfully do and perform every of such contract; and indemnify the obligee against all damage suffered by failure to perform such contract according to the provisions thereof and in accordance with the plans, details, specifications and bills of material therefor; and shall pay all lawful claims of subcontractors, materials suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materials supplier or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any way affect the obligations of said surety on its bond, and it does hereby waive notice of any such modifications, omissions or additions to the terms of the Contract or to the Work or to the specifications.

SIGNED AND SEALED THIS \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

PRINCIPAL: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

SURETY: \_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-fact

SURETY COMPANY INFORMATION:

Company's Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

## **BID GUARANTY & CONTRACT BOND – continued**

### SURETY AGENT INFORMATION:

Agent's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

NOTE: Failure by any party to sign this Bid Guaranty & Contract Bond shall result in rejection of the bid.

A properly executed Power of Attorney showing the authority of persons executing the bond for the Surety or Sureties, at the date of this bond, should be submitted with this bond.





# PROPOSAL

## CONTRACTOR QUESTIONNAIRE

Submitted to: The Metropolitan Park District of the Toledo Area

Address: 5100 W. Central Avenue, Toledo, Ohio 43615

Submitted by:

Name:

Address:

Principal Office:

☐ Corporation                      ☐ Limited Liability Company                      ☐ Partnership

☐ Individual                      ☐ Joint Venture                      ☐ Other

Name of Project: \_\_\_\_\_

Type of Work: \_\_\_\_\_

☐ General Construction      ☐ HVAC                                      ☐ Electrical

☐ Plumbing                      ☐ Other (please specify):

1. How many years has your organization been in business as a Contractor?
2. How many years has your organization been in business under its present business name?
  - a. Under what other or former names has your organization operated?
3. If your organization is a corporation, answer the following:
  - a. Date of Incorporation:
  - b. State of Incorporation:
  - c. List Officers:
4. If your organization is a limited liability company, answer the following:
  - a. Date of Organization:
  - b. State of Organization:
  - c. Names of Members:
  - d. List Managers and/or Officers:

## **CONTRACTOR QUESTIONNAIRE – continued**

**5.** If your organization is a partnership, answer the following:

- a.** Date of Organization:
- b.** Type of Partnership:
- c.** Name(s) of General Partner(s):

**6.** If your organization is individually owned, answer the following:

- a.** Date of Organization:
- b.** Name of Owner:

**7.** If the form of your organization is other than those listed above, describe it and name the principals:

**8.** Licensing & Certifications

- a.** List jurisdictions and trade categories in which your organization is legally qualified to do business.
- b.** Please check if you company currently holds any of the following certifications:
  - ☐ Certified Encouraging Diversity, Growth and Equity (EDGE) by State of Ohio
  - ☐ Certified Minority Business Enterprise (MBE) by State of Ohio, Section 125 ORC
  - ☐ Certified Women's Business Enterprise (WBE) by State of Ohio
  - ☐ Certified Small Disadvantaged Business (SDB) by SBA
  - ☐ Veteran Owned
- c.** Please list any other special certifications or designations:

**9.** Experience

- a.** List the categories of work that your organization normally performs with its own personnel:

**10.** Claims and Suits. (If the answer to any of the questions below is yes, please attach details).

- a.** Has your organization ever failed to complete any work awarded to it?
- b.** Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?
- c.** Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?
- d.** Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details).

## **CONTRACTOR QUESTIONNAIRE – continued**

**11.** The undersigned bidder has constructed the following similar projects for governmental agencies or political subdivisions. Please limit the number of projects you list to five.

PROJECT	AGENCY	DATES	CONTACT PERSON AND PHONE NO.	CONTRACT AMOUNT
1.				
2.				
3.				
4.				
5.				

**12.** The undersigned bidder is working on the following construction projects which are currently in progress.

PROJECT	AGENCY	ANTICIPATED COMPLETION DATE	CONTACT PERSON AND PHONE NO.	CONTRACT AMOUNT
1.				
2.				
3.				
4.				
5.				

### **13. References**

**a.** List Trade References:

**b.** List Bank References:

**c.** Surety - Name of bonding company:

**d.** Surety - Name and address of agent:

**e.** Financing Statement - Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement.

**f.** Workers Compensation - On a separate sheet, describe your workers' compensation history for the last three years, including claims made, claims settled, and premium/modification rate changes.

## **CONTRACTOR QUESTIONNAIRE – continued**

**g.** Equipment - The undersigned bidder proposes to use the following entirely owned equipment on this Project:

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**h.** Equipment - The undersigned bidder proposes to use the following rented equipment on this Project:

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**14.** Proposed schedule of operations for this Project:

ITEM

STARTING TIME  
(number of days after  
contract awarded)

COMPLETION TIME  
(number of days to complete)

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**15.** Identify who will be the Project Engineer, Project Manager, and/or Project Superintendent on this Project, and provide information regarding the training, education and experience of each such individual:

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## **CONTRACTOR QUESTIONNAIRE - *continued***

**16.** Identify Subcontractors to be employed for the Project:

NAME	ITEM OF WORK

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name of Organization:

By:

Title:



## PROPOSAL

### HOURLY WAGE RATE AFFIDAVIT

City of \_\_\_\_\_

County of \_\_\_\_\_

ss

State of \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes and says that he/she is

\_\_\_\_\_ (sole owner, partner, president, etc.) of \_\_\_\_\_ the party making the foregoing proposal or bid; that the awarded work will comply with the Davis Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction") Current Prevailing Wage determination.

\_\_\_\_\_  
Affiant

Sworn and subscribed for me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_ County, Ohio

My Commission Expires:

\_\_\_\_\_, 20\_\_\_\_\_.





# PROPOSAL

## NON-COLLUSION AFFIDAVIT

City of \_\_\_\_\_

County of \_\_\_\_\_

ss

State of \_\_\_\_\_

\_\_\_\_\_ being first duly sworn deposes and

says that he is \_\_\_\_\_ (Sole Owner, Partner, President,

etc.) of \_\_\_\_\_ the party making the foregoing proposal or bid; that such bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder or person to put in a sham bid, or that such other person shall refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, communication or conference, with any person, to fix the bid price of affiant or any other bidder, or to fix any overhead, profit or cost element of said bid price or that of any other bidder, or to secure any advantage against the Metropolitan Park District of the Toledo Area or any person or persons interested in the proposed contract; and that all statements contained in said proposal or bid are true; further, that such bidder has not directly or indirectly submitted this bid or the contents thereof, or divulged information or data relative to any association or member or agent thereof.

\_\_\_\_\_  
Affiant

Sworn and subscribed for me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_ County, Ohio

My Commission Expires:

\_\_\_\_\_, 20\_\_\_\_\_.



## CONTRACT

### PERSONAL PROPERTY TAX AFFIDAVIT

City of \_\_\_\_\_

County of \_\_\_\_\_

ss

State of \_\_\_\_\_

The undersigned being first duly sworn according to law, deposes and says that it is engaged in the building business in the city of \_\_\_\_\_, Ohio;

Affiant further says that he/she is an officer of \_\_\_\_\_ (Company),

and at the time of submitting its bid on \_\_\_\_\_ (Project Name)

located at \_\_\_\_\_, Ohio, was not charged with any delinquent personal property taxes on the general tax list of personal property of any county in which

\_\_\_\_\_ (Client Name) taxing district has territory;  
Affiant further says that in consideration of the award of a contract in the above referenced project, the above statement is incorporated in said contract as a covenant of the undersigned.

Affiant further says and represents that he/she has read and understands the provisions outlined in Revised Code Section 5719.042 as they relate to contractors submitting statements regarding delinquent taxes.

\_\_\_\_\_  
Affiant

Sworn and subscribed for me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_ County, Ohio

My Commission Expires:

\_\_\_\_\_, 20\_\_\_\_\_.



## CONTRACT

### WORKERS' & UNEMPLOYMENT COMPENSATION AFFIDAVIT

City of \_\_\_\_\_

County of \_\_\_\_\_

ss

State of \_\_\_\_\_

The undersigned certifies that within the past nine (9) months he/she has paid all contributions or made all payments in lieu of contributions as required by Ohio law for workers' compensation and unemployment compensation. He/she has not engaged, as independent contractors, any workers, for whom workers' compensation and/or unemployment compensation contributions or payments in lieu of contributions are required to have been made.

\_\_\_\_\_  
Affiant

Sworn and subscribed for me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_  
County, Ohio

My Commission Expires:

\_\_\_\_\_, 20\_\_\_\_\_.



## CONTRACT

### AFFIRMATIVE ACTION AFFIDAVIT

City of \_\_\_\_\_

County of \_\_\_\_\_

State of \_\_\_\_\_

ss

I, \_\_\_\_\_  
(Name of Person Signing) (Title)

of the \_\_\_\_\_ do hereby  
(Company Name)

certify that I agree to practice non-discrimination on this Metropolitan Park District of the Toledo

Area project, \_\_\_\_\_.

Further that proof of compliance may be required by the Park District, and that non-compliance and violation will be reported to the appropriate State and Federal agencies.

\_\_\_\_\_  
Affiant

\_\_\_\_\_  
Print / Type Name of Affiant

Sworn and subscribed for me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_ County, Ohio

My Commission Expires:

\_\_\_\_\_, 20\_\_\_\_\_.





# CONTRACT

## 100% PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,

\_\_\_\_\_ as principal and

\_\_\_\_\_ as sureties, are held  
and firmly bound unto the Metropolitan Park District of the Toledo Area, a political subdivision, in

the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), for the payment of which, well  
and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors,  
administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION is such that whereas the said

\_\_\_\_\_ did on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ enter into a  
contract with the Metropolitan Park District of the Toledo Area for:

\_\_\_\_\_, which said Contract is made a part of this bond the  
same as though set forth herein:

NOW, THEREFORE, if the said Principal shall well and faithfully do and perform the things agreed  
by him to be done and performed according to the terms of said Contract and shall pay all lawful  
claims of subcontractors, material suppliers and workmen, for labor performed and material  
furnished in the carrying forward, performing or completing of said Contract, we agreeing and  
assenting that this undertaking shall be for the benefit of any material suppliers or workmen having  
a just claim as well as the Obligee herein, then this obligation shall be void, otherwise the same  
shall remain in full force and effect, it being expressly understood and agreed that the liability of the  
Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation  
as herein stated.

IT IS HEREBY EXPRESSLY FURTHER UNDERSTOOD AND AGREED that this bond is also given  
and made as a guarantee against defective material and workmanship in the said work covered by  
said Contract until final acceptance of the work by the Metropolitan Park District of the Toledo Area.

## **100% PERFORMANCE BOND - *continued***

The said Surety, for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work performed or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract, or to the work or to the Specifications.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

IN PRESENCE OF: \_\_\_\_\_  
Principal

\_\_\_\_\_  
Witness Title

\_\_\_\_\_  
Witness Surety

\_\_\_\_\_  
Title

I hereby approve the form and correctness of the foregoing bond.

\_\_\_\_\_, \_\_\_\_\_ B. Gary McBride, Solicitor

## CONTRACT

### LABOR AND MATERIALS PAYMENT BOND

This bond is issued simultaneously with performance bond in favor of the owner conditioned on the full and faithful performance of the contract.

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ as

principal, hereinafter called Principal, and, \_\_\_\_\_ as surety, hereinafter called Surety, are held and firmly bound unto the Metropolitan Park District of the Toledo Area as Obligee, hereinafter called Owner, for the use and benefit of

claimants as herein below defined, in the amount of \_\_\_\_\_  
(100% of contract price)

\_\_\_\_\_ dollars (\$ \_\_\_\_\_), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated \_\_\_\_\_, entered into a contract with Owner for in accordance with Drawings and Specifications which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above name Principal and Surety hereby jointly and severally agree with the owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

## **LABOR AND MATERIALS PAYMENT BOND - *continued***

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two (2) of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials or which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be on record against said improvement, whether or not claim for the amount of such lien is presented under and against this bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Principal (seal)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Title

# **CONTRACT**

## **WORK SITE POLICIES AND PROCEDURES**

### **METROPOLITAN PARK DISTRICT OF THE TOLEDO AREA**

1. All construction personnel must register at the general trade contractor office trailer each day they are on the job site and pick up an identification badge. Identification badges must be worn at all times while working the job site. Construction personnel shall return the badges and sign out at the end of each workday. Upon signing in and out, construction personnel must log the time of day.
2. Parking on site is limited to areas designated by the Park District. The general trade contractor shall inform the Park District of the number and types of vehicles anticipated to be parked at the site. The Park District reserves the right to restrict parking and vehicle traffic based on weight, size and number of vehicles.
3. This Work site has a “no radio” policy that must be strictly adhered to by all construction personnel. Any radios, CD players, tape players or similar devices, found on site will be confiscated and returned at the end of the Project.
4. The Park District has a “no smoking” policy. Anyone who is caught smoking on Park District property will be asked to leave the site immediately.
5. There shall be no fraternization, improper behavior, or profanity to be directed toward, or in the vicinity of Park District staff or visitors.
6. No offensive wording or drawings on any articles of clothing will be acceptable. This includes references to drugs, alcohol, tobacco, and inappropriate behavior.
7. All personnel will wear hard hats, commence work boots, and work clothing, which consists of long pants and shirts with sleeves.
8. Weapons, concealed or otherwise, are prohibited on Park District property.
9. Illegal substances are prohibited on Park District property.

I, \_\_\_\_\_, have read, understand, and hereby agree to cooperate with and abide by the foregoing policies and procedures.

COMPANY:

By: \_\_\_\_\_

Date: \_\_\_\_\_

# CONTRACT FORM

## CONTRACT BETWEEN OWNER AND CONTRACTOR

THIS CONTRACT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the Metropolitan Park District of the Toledo Area, Lucas County, Ohio, (the "Owner") and \_\_\_\_\_ (the "Contractor").

WITNESS THAT the Contractor and the Owner for the consideration stated herein agree as follows:

### ARTICLE I - SCOPE OF WORK

The Contractor shall perform everything required to be performed and shall provide and furnish all of the labor; materials; necessary tools; expendable equipment; and all utility and transportation services required to perform and complete, in a workmanlike manner, all of the work required for: **Metroparks Toledo – Riverside Trail East**, , all in strict accordance with the plans and specifications including any and all addenda, which plans and specifications are made a part of this contract, and in strict compliance with the Contractor's proposal and other contract documents herein mentioned which are a part of this contract. The Contractor shall do everything required by this contract and other contract documents constituting a part hereof.

### ARTICLE II - COMPENSATION TO BE PAID THE CONTRACTOR

In consideration of the completion of the work described herein and the fulfillment of all stipulations of this contract to the satisfaction and acceptance of the Owner, the Owner shall pay and the Contractor further agrees to receive and accept, subject to any additions or deductions provided for

herein, the amount of \_\_\_\_\_. The unit prices or lump sum herein above referred to shall be full compensation for furnishing all the labor, equipment and materials and for the costs of all premiums on insurance and bonds for doing all the work contemplated and specified in this contract; also for all loss or damage arising out of the nature of the aforesaid work, or from any action of the elements, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same; and for all risks of every description connected with the work; and for well and faithfully completing the work and the whole thereof, in full compliance with the plans and specifications and requirements of the Owner. Payments are to be made to the Contractor in accordance with and subject to the provisions embodied in the General Conditions attached hereto and made a part hereof.

### ARTICLE III - TIME OF COMPLETION

The Contractor agrees to complete the work included under this Contract per the contractor's designated completion date on the Proposal Form.

### ARTICLE IV - COMPONENT PARTS OF THIS CONTRACT

This Contract consists of the Contract Documents defined in Section 1.B. of the General Conditions attached hereto, all of which are as fully a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached:

## **CONTRACT BETWEEN OWNER AND CONTRACTOR - *continued***

### ARTICLE V - GUARANTEE

The Contractor hereby guarantees all work furnished and performed under this contract against any defects in workmanship or material for a period of one (1) year following the date of acceptance of the work by the Owner. Under this guarantee, the Contractor agrees to make good without delay at his own cost and expense any failure of any part of the work due to faulty materials, construction or installation or to the failure of any equipment to perform successfully all work put upon it within the limits of the specifications and further make good any damage to any part of the work caused by such failure. Said Contractor also agrees that the Contractor's Bonds shall fully cover all guarantees in this article contained.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in three original counterparts as of the day and year first written above.

Metropolitan Park District of the Toledo Area

By: \_\_\_\_\_  
David D. Zenk, Director

The Contractor

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
(Please print or type name here)

IRS Identification Number  
or Social Security Number: \_\_\_\_\_

APPROVED AS TO FORM:  
(B. Gary McBride)





## CONTRACT

### CORPORATION CERTIFICATE

STATE OF \_\_\_\_\_

SS

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as Contractor in the foregoing contract that \_\_\_\_\_, who signed said contract on behalf of the Contractor as \_\_\_\_\_ of said corporation was \_\_\_\_\_ of said corporation at the time of said signature; and that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_  
Notary Public in and for the County of

\_\_\_\_\_, State of \_\_\_\_\_

(Notary Seal)

My commission expires: \_\_\_\_\_

This contract is authorized by \_\_\_\_\_



## CONTRACT

### LIMITED LIABILITY COMPANY CERTIFICATE

STATE OF \_\_\_\_\_

SS

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the company named as Contractor in the foregoing contract that \_\_\_\_\_, who signed said contract on behalf of the Contractor as \_\_\_\_\_ of said company was \_\_\_\_\_ of said company at the time of said signature; and that said contract was duly signed for and in behalf of said company by authority of its governing body and is within the scope of its corporate powers.

\_\_\_\_\_  
Notary Public in and for the County of

\_\_\_\_\_, State of \_\_\_\_\_

(Notary Seal)

My commission expires: \_\_\_\_\_

This contract is authorized by \_\_\_\_\_



## CONTRACT

### PARTNERSHIP CERTIFICATE

STATE OF \_\_\_\_\_

SS

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared

\_\_\_\_\_, known to me and known by me to be the person who executed the above instrument, who, being by me first duly sworn, did depose and say that he

is a general partner in the \_\_\_\_\_ partnership of

\_\_\_\_\_; that said partnership consists of himself and

\_\_\_\_\_ as \_\_\_\_\_ partners; and that he executed the foregoing instrument on behalf of said partnership for the uses and purposes stated herein.

\_\_\_\_\_  
Notary Public in and for the County of

\_\_\_\_\_, State of \_\_\_\_\_

(Notary Seal)

My commission expires: \_\_\_\_\_

This contract is authorized by \_\_\_\_\_



## CONTRACT

### PROPRIETORSHIP CERTIFICATE

STATE OF \_\_\_\_\_

SS

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared

\_\_\_\_\_ known to me and known by me to be the person  
who executed the above instrument, who, being by me first duly sworn, did depose and say that

\_\_\_\_\_ is a proprietorship under the name of which he  
conducts business and that he executed the foregoing instrument on behalf of himself, individually

and doing business in the name of \_\_\_\_\_ for the uses and purposes  
stated herein.

\_\_\_\_\_  
Signature of Proprietor

\_\_\_\_\_  
Notary Public in and for the County of

\_\_\_\_\_, State of \_\_\_\_\_

(Notary Seal)

My commission expires: \_\_\_\_\_





# **GENERAL CONDITIONS**

## **1. DEFINITIONS AND TERMS**

The term "METROPOLITAN PARK DISTRICT" or "PARK DISTRICT" or "METROPARKS" or "OWNER" shall mean the Metropolitan Park District of the Toledo Area or its representatives duly authorized to act in the matters in question.

The term "CONTRACT DOCUMENTS" shall mean and include the following:

1. Project Manual Title Page
2. Table of Contents
3. Notice to Bidders
4. Affirmative Action Policy
5. Instructions to Bidders
6. Bid Proposal Form
7. Bid Guaranty and Contract Bond Form
8. Contractor's Questionnaire
9. Non-Collusion Affidavit
10. Hourly Wage Rate Affidavit
11. Personal Property Tax Affidavit (R.C. § 5719.042)
12. Workers' & Unemployment Compensation Affidavit
13. Affirmative Action Affidavit
14. Performance Bond
15. Labor and Materials Payment Bond
16. Prevailing Wage Agreement
17. Project Labor Agreement
18. Site Policies and Procedures
19. Contract between Owner and Contractor
20. General Conditions of the Contract for the Project (AIA Document A201-1997)
21. Special Conditions
22. Location Map
23. Project Specifications
24. Project Drawings
25. Addenda
26. State of Ohio, Department of Transportation "Construction and Materials Specifications" current edition, together with all supplements and revisions thereto in effect fourteen (14) days prior to the opening of bids, if applicable.

The term "CONTRACTOR" shall mean the person or persons, company, firm, partnership, or corporation, or its legal representative, undertaking work on an executed contract.

The term "SUB-CONTRACTOR" shall mean any person, firm or corporation undertaking work under the obligations of the Contractor, who prior to such undertaking, received the written consent of the Metropolitan Park District.

The term "ARCHITECT" shall be held to mean a duly authorized representative of the Metropolitan Park District of the Toledo Area, designated and authorized to act as its agent.

The letters "ASTM," when used on the plans or in the Specifications, shall mean American Society for Testing Materials.

## **GENERAL CONDITIONS - *continued***

The term "THE WORK" shall connote all work specified, indicated or necessary for the contemplated improvement covered by the Contract and Supplemental Agreements thereto.

The term "CONTRACT" shall mean the written agreement covering the performance of the work and furnishing of labor, tools, equipment and materials in construction of "THE WORK." The Contract shall include Instruction to Bidders, Proposal, Specifications and Bonds; also any and all Supplemental Agreements required to complete "THE WORK" in a substantial and acceptable manner.

The term "SPECIFICATIONS" shall mean the directions, provisions and requirements as referred to, adopted, contained herein or amended, pertaining to the method and manner of performing the work and the quantities and qualities of materials to be furnished, together with the method of computing payments under the Contract.

The term "PLANS" shall mean the maps, profiles, plans and detail drawings accompanying and forming a part of these documents. Should there be any discrepancy between the drawings and the written specifications, the written specifications shall prevail.

The term "PROJECT" shall mean all labor, materials, equipment and services necessary for the proper completion of \_\_\_\_\_.

The term "PROPOSAL" shall mean the Bid Proposal Form and related Bid Documents as submitted by the Contractor.

The term "SUBSTANTIAL COMPLETION" – shall mean when the work is sufficiently complete in accordance with the Contract Documents to allow the Owner to occupy or utilize the work for its intended use without further disruption, as determined by the Park District's inspection.

### **2. INTENT OF CONTRACT DOCUMENTS**

The Contract Documents are complementary, and what is called for by any one shall be binding as if called for by all. The intention of the Contract Documents is to include in the contract price the cost of all labor and materials, fuel, tools, plant, equipment, light, transportation and all other expenses necessary for the proper execution of the work.

In interpreting the Contract Documents, words describing materials or work which have a well known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well known meaning recognized by the architect and the trade

### **3. TIME OF COMMENCEMENT AND COMPLETION**

**3.1 Project Construction Schedule.** Within ten (10) calendar days of execution of this Agreement, and thereafter as from time to time requested by the Owner or its representative, the Contractor shall furnish for the consideration of the Owner information for the scheduling of the times and sequence of operations required for its Work to meet the Owner's overall schedule requirements as set forth in \_\_\_\_\_, including but not limited to proposed staffing levels for each phase of the Work, proposed dates for material fabrication and delivery, and proposed dates for equipment

## **GENERAL CONDITIONS – *continued***

delivery. The Owner shall prepare the initial Project Time Schedule in substantial compliance with the Construction Documents and may thereafter from time to time make changes to the Project Time Schedule. The Owner shall consider, but is not bound by, the information supplied by the Contractor. The Contract Documents shall govern whether the Contractor is entitled to any additional compensation due to changes in the Project Time Schedule. The Contractor's obligation to furnish requested scheduling information is a material term of its Contract, the breach of which may be justification for withholding payment otherwise due the Contractor. Inclusion of the proper staffing levels in the Project Time Schedule shall not constitute approval of such staffing levels. The Contractor shall continuously monitor the Project Time Schedule so as to be familiar with the timing, phasing, and sequence of operations of the Work and of other work on the Project and shall execute the Work in accordance with the requirements of the Project Time Schedule, including any revisions thereto.

**3.2 Date of Commencement and Completion.** The Contractor shall commence work within one (1) week after the date of written notice from the Owner to proceed and the rate of progress shall be such that the whole Work shall be substantially completed and the ground cleaned up in accordance with the Contract and Specifications within the time limit stated in the Proposal which shall be no later than: **Sunday, October 31, 2021** (the "Date for Substantial Completion"), unless an extension of this time shall have been granted in the manner specified.

The Contractor expressly covenants and agrees that in undertaking to complete the work within the time mentioned, he has taken into consideration and made allowance for all of the ordinary delays and hindrances incidental to such work, whether growing out of delays in securing materials for workmen, or otherwise. Should the Contractor, however, be substantially delayed in the prosecution and completion of the work by any act of neglect of the Owner, its agents, or by causes beyond the Contractor's control, including strikes, lock-outs, fire or other unavoidable casualties, the Contractor shall have no claims for damages for any such cause or delay, but he shall in such cases be entitled to such extension of the time specified for the completion of the work as the Owner shall award in writing. Claim for such extension of time shall be made by the Contractor in writing within one (1) week from the time when such alleged cause for delay shall occur.

Work shall be deemed completed when it has been approved and accepted by the Metropolitan Park District.

### **3.3 Substantial Completion**

**3.3.1** Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**3.3.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**3.3.3** Upon receipt of the Contractor's list, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently

## **GENERAL CONDITIONS - *continued***

complete in accordance with the Contract Documents to allow the Owner to occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. Upon completion or correction of such item, the Contractor shall submit a request for another inspection by the Owner to determine Substantial Completion.

**3.3.4** When the Work or designated portion thereof is substantially complete, the Owner and Contractor shall sign a Certificate of Substantial Completion which shall establish the date of Substantial Completion, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Any warranties applicable to the Work shall commence on the date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion.

**3.4** Liquidated damages. If the Contractor does not have its Work on the Project completed by the Date for Substantial Completion, the Contractor shall pay the Owner (and the Owner may set off from sums coming due the Contractor) liquidated damages in the amount of: **\$500.00** per day until Substantial Completion is achieved. In addition to the Owner's right to Liquidated Damages, the Contractor shall indemnify, defend, and hold the Owner and its employees harmless from any delay, acceleration, loss of productivity, or other claims relating to or resulting from delays caused by the Contractor and from all costs and expenses incurred as a result of such claims, including but not limited to attorneys' and consultants' fees and expenses. The Contractor's obligation to indemnify, defend and hold the Owner harmless under this section is joint and several.

The Contractor acknowledges that the foregoing liquidated damages represent a reasonable estimate of the actual damages for loss of or interference with the intended use of the Project that the Owner will incur if the Work is not Substantially Complete by its Date for Substantial Completion and thereafter is not Finally Complete.

## **4. CONTRACT SUM**

The lump sum Contract Sum to be paid by the Owner to the Contractor, as provided herein, for the satisfactory performance and completion of the Work and all of the duties, obligations and responsibilities of the Contractor under this Agreement and the other Contract Documents will be

\_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Contract Sum includes labor and materials, and all federal, state, county, municipal, and other taxes imposed by law, including but not limited to any sales, use, and personal property taxes payable by or levied against the Contractor on account of the Work or the materials incorporated into the Work. The Contractor will pay any such taxes. The Contract does not include taxes from which the Contractor is exempt because of the Owner's tax-exempt status. The Contract Sum includes the Base Bid stated on the Contractor's Bid Form and the following Alternates:

Without prejudice to any of the Owner's rights and remedies under the Contract Documents, if the Contractor fails to submit payment applications and any required documentation, and the Owner has provided written notice of such failure, but the Contractor has not responded, then, not less than ninety (90) days after the written notice to the Contractor to do so has been provided to the Contractor, the balance of the Contract Sum shall remain and become the sole possession of the Owner.

## **GENERAL CONDITIONS – *continued***

### **5. PERFORMANCE BOND**

The successful bidder shall be required to provide a performance bond in an amount not less than 100 per cent of the total contract price, conditioned on the faithful performance of the contract, the completion of the work within the time specified and prompt payment of all persons furnishing labor and materials necessary for all work. The performance bond shall be drawn in favor of the Metropolitan Park District of the Toledo Area and shall be by a surety company acceptable to the Metropolitan Park District.

### **6. LABOR AND MATERIALS PAYMENT BOND**

A payment bond on the part of the contractor shall be furnished for 100 per cent of the contract price. The payment bond shall assure payment as required by law of all persons supplying labor and materials in the execution of the work provided in the contract.

### **7. ADDITIONAL SECURITY**

If at any time after the execution of this Contract and approval of the required performance bond, the Owner shall deem any of the Sureties upon such bond to be unsatisfactory, or if for any reason such bond shall cease to be adequate security for the Owner, the Contractor shall, within five (5) days of receipt of a written order to do so, furnish a new or additional bond satisfactory to the Owner as to form and sum, and signed by such sureties as shall be satisfactory to the Owner. Further payments shall be withheld from the Contractor until such new or additional bond has been furnished and approved.

### **8. VERBAL STATEMENTS NOT BINDING**

It is understood and agreed that the written terms and provisions of this Contract shall supersede all prior verbal statements of the Owner or representatives of the Owner, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any way whatsoever this Contract.

### **9. OWNER TO DECIDE**

The Owner shall decide all questions regarding the fulfillment of the terms of the Contract or the intent or purposes of the Contract, and the Owner's decision shall be final and conclusive as to both parties to this Contract; and the Owner's approval of the work shall be a condition precedent to the final settlement and payment of any amount which may be due the Contractor.

### **10. ASSIGNMENT OF CONTRACT**

Assignment of this contract, or any part thereof, or any funds to be received thereunder, shall be subject to the written approval of the Metropolitan Park District of the Toledo Area. Any such assignment shall contain a clause to the effect that it is agreed that the funds to be paid the assignee are subject to the prior lien for rendered services or materials supplied for the performance of the work called for in this contract, in favor of all persons, firms or corporations rendering such service or supplying such materials.

### **11. COPIES OF CONTRACT AND BONDS**

Three (3) executed copies of the contract and bonds will be required by the Metropolitan Park District.

## **GENERAL CONDITIONS - *continued***

### **12. EFFECTIVE DATE OF CONTRACT**

Subject to applicable provisions of law, this contract shall be in full force and effect as a contract from and after the date when a fully executed and approved counterpart thereof is delivered to the contractor.

### **13. PLANS AND SPECIFICATIONS**

The Owner will furnish to the Contractor a reasonable number of copies of the Contract Documents without cost. At least one (1) approved copy shall be kept at the site of the Work and made available at all times for the use of the Owner.

When deemed necessary, additional detailed drawings will be furnished to the Contractor during the progress of the work. All such drawings shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom and will become a part of this Contract.

The Owner reserves the right to make reasonable alterations in any drawing which may be deemed necessary or in the public interest, without constituting grounds for any claim by the Contractor for payment, other than that provided under the Contract.

### **14. INSPECTION AND TESTING**

The Owner shall provide the inspection for the work in this Contract and will decide all questions relating to the materials, workmanship, plans and specifications.

The Contractor shall at all times provide convenient access to the project for the Owner and safe and proper facilities for the inspection of materials and manufacturer's products at the place of production or manufacture and of all parts of the Work at the site.

All materials rejected shall be immediately removed from the Work and not again offered for inspection. Any materials or workmanship found at any time to be defective shall be remedied at once, regardless of previous inspection. The inspection and supervision of the work is intended to aid the Contractor in the performance of his Work, but shall not release the Contractor from any of his contract obligations.

In cases where the Owner may require the physical testing of samples of material used in the project, the Park District may engage, at its own cost and expense, an independent testing laboratory to obtain such samples, carry out the required tests and report the results directly to the Park District. Materials for testing shall be supplied by the Contractor. The contractor shall coordinate his work schedule to include testing.

### **15. BOUNDARIES OF WORK**

The Park District will provide the necessary land for the erection of all work specified in this Contract, and the Contractor shall not enter or occupy with personnel, men, tools or materials, any private ground outside the property of the Park District without the written consent of the Owner thereof. Other Contractors of the Park District may, for all purposes required by their Contract, enter upon the work and premises used by the Contractor, and the Contractor shall give them all reasonable facilities and assistance for the completion of adjoining work.

### **16. EXISTING BUILDING**

There are no existing park facilities on the subject property.

## **GENERAL CONDITIONS - *continued***

### **17. WORK IN BAD WEATHER**

During freezing, stormy or inclement weather, no work shall be done, except as can be done satisfactorily and in a manner to secure first-class construction throughout; and unless temporary heat is provided in the event of freezing weather. The Contractor shall provide acceptable temporary heat as required, when work is being prosecuted in cold weather, to prevent freezing of pipe lines and damage to work. All temporary heating facilities shall be removed when directed.

### **18. SALES TAX AND FEDERAL TRANSPORTATION TAX**

**A.** The Owner is an organization exempt from taxation under Section \_\_\_\_ of the Internal Revenue Code of 1986 and is exempt from taxation under the Ohio Sales Tax and Use Tax Laws. Building materials that the successful bidder purchases for incorporation into the Project will be exempt from state sales and use taxes if the successful bidder provides a properly completed sales tax exemption certificate to the vendors or suppliers when the materials are acquired. The Owner will execute properly completed certificates for this purpose on request.

**B.** All materials used to complete the Project are exempt from Federal Transportation Tax under Internal Revenue Code, Section 4272(b), as amended. The Contractor shall have all shipping papers clearly show that the construction material is consigned to the Metropolitan Park District in care of the Contractor.

### **19. INCOMPETENT WORKMEN**

Incompetent, careless or disorderly workmen or foremen will not be permitted on the work, and shall be removed on complaint by the Park District.

Contractor shall not make claim for any damages by reason of the discharge of any such person.

### **20. SAFETY; ACCIDENT PREVENTION**

Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and all hazards shall be guarded or eliminated in accordance with the safety provisions of the "Manual of Accident Prevention in Construction," published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law.

In the event of emergency the Contractor shall stop work and immediately notify the Metroparks Project representative of the situation. If the project representative is not available, the Contractor shall notify the park ranger police of the situation.

Within 24 hours the Contractor must investigate the incident, make needed corrections and submit a written report to the Owner describing the incident, the findings of the investigation and any corrective action taken by the Contractor. The Contractor also must compile a summary listing of all work-related injuries and illnesses experienced by its employees and any subcontractor employees.

The Contractor must prepare and implement a written job-site safety plan encompassing all aspects of the Work including those performed by subcontractors. This plan must include a review of all aspects of the Project, identify all tasks that may present a health or safety hazard to employees, and contain a strategy for unified coordinated implementation with subcontractors.

## **GENERAL CONDITIONS - *continued***

The Contractor must conduct a safety meeting with its employees at least once a week to keep employees informed of changes in work that may safely be performed and safe work practices. The Contractor must keep a written record of employee attendance, information provided and safety concerns received from employees.

### **21. LAWS AND ORDINANCES**

The Contractor shall keep himself fully informed of, and shall comply with, all existing township, municipal, state, federal and/or other applicable laws, ordinances and regulations, and township, city, state or federal laws in any way limiting or controlling the actions or operations of those engaged upon the work or affecting the materials supplied to or by him. He shall protect and indemnify the Owner and its officers and agents against any claims or liabilities arising from or based on any violations of the same.

### **22. PERMITS**

Unless noted otherwise, the Contractor shall obtain and pay for all permits and licenses, including permits to demolish and build, and give all necessary legal notices, and pay all fees required for the work. The Contractor shall provide copies of permits to the Owner prior to demolishing of buildings. Confer with the Owner prior to applying for permits as permitting is often initiated early by the Owner/Architect.

### **23. TERMINATION FOR BREACH**

In the event that any of the provisions of this Contract are violated by the Contractor or by any of his subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate such Contract, such notice to contain the reasons for such intention to terminate the Contract, and unless within ten (10) days after the serving of such notice upon the Contractor such violation shall cease and satisfactory arrangements for correction be made, the Contract shall cease and terminate upon the expiration of said ten (10) days.

In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Contractor, and the Surety shall have the right to take over and perform the Contract, provided, however, that if the Surety does not commence performance thereof within thirty (30) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute same to completion by contract for the account and at the expense of the Contractor, and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned by Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances and plant as may be on the site of the Work and necessary therefor.

### **24. OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents, fails to perform any provision of the Contract, or fails to complete the Project within the time designated by the Contractor in the Form of Proposal, and no written extension is approved by the Owner, the Owner may, after seven (7) days written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of additional management services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.



## **GENERAL CONDITIONS - *continued***

### **25. ROYALTIES AND PATENTS**

The Contractor shall pay the cost of all royalties and patents required for equipment installed and processes employed under this Contract, and shall defend all suits or claims for infringement and save the Owner harmless from loss on account thereof. The Owner is hereby authorized to reserve final payment until proof is given that all equipment is free from encumbrance.

### **26. CONSTRUCTION RESPONSIBILITY**

The Contractor shall be responsible to the Owner for the acts and omissions of his employees, sub-contractors and their agents and employees, and other persons performing any work under a contract with the Contractor.

### **27. WARRANTY/CORRECTION OF WORK**

The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Contractor shall promptly correct all work rejected by the Owner as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, including compensation for the Owner additional services made necessary thereby.

If within one (1) year after the date of completion of the work or designated portion thereof or within one (1) year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

### **28. SUPERINTENDENT**

The Contractor must have, at all times, a competent foreman, superintendent, or representative on the work, to which instructions and orders may be given. Such orders and instructions shall have the same force and effect as if given directly to the Contractor.

### **29. EXTRA WORK**

The Contractor shall do any work and/or furnish any materials not herein provided for, which in the opinion of the Owner, may be found necessary or desirable for the completion of the work. No extra work will be paid for or allowed unless the same was done upon written order of the Owner and after all legal requirements have been complied with. The Contractor agrees that he will accept as full compensation for extra work, so ordered, as determined by one of the following methods:

**A.** Unit prices stated in the Proposal, if applicable

**B.** A price mutually agreed upon in writing by the Owner and Contractor, or

## **GENERAL CONDITIONS - *continued***

**C.** A sum equal to the actual net cost of materials and labor (including the premium for Workers' Compensation Insurance) plus agreed rental for equipment necessary for the extra work, to the sum of which may be added fifteen percent (15%) as compensation for all other items of expenses, including overhead, superintendent, use of small tools and other insurance.

The decision of the Park District as to whether extra work in fact has been performed shall be conclusive and binding upon both parties to this Contract.

### **30. CLEANING AND REPAIRS DURING CONSTRUCTION; WASTE MANAGEMENT**

**30.1** The structures and appurtenances to be built under this contract shall be kept clean during construction of the work. Immediately upon completion of a part of the contract or a portion of a structure the Contractor shall remove all dirt and rubbish from any section completed and shall make all repairs or do any finishing to the satisfaction of the Park District. In case such cleaning and repairs are not made promptly and satisfactorily, the Park District may omit such section or sections from the estimate of work done until such cleaning and repairs are made.

**30.2** The Contractor shall provide and maintain all Danger/Caution Construction Area signs in and around the work area. The Contractor must take action to preserve any adjacent buildings or structures from any damage during the Project. Contractor must field verify the dimensions of the Project.

**30.3** The Contractor shall supply trash dumpsters for the removal of trash, rubbish, and debris resulting from the Work. Proof of recycling or disposal is required. The Contractor will provide the Park District with a copy of the shipping papers or manifests for wastes disposed of or recycled from its properties. All wastes must be placed in containers and properly labeled for disposal. Contractor shall recycle where feasible.

### **31. REMOVAL OF TEMPORARY STRUCTURES**

On or before completion of the work, the Contractor shall without charge therefor, tear down and remove all temporary buildings and other structures built by him for facilitating the carrying out of the work, and shall remove all surplus material and rubbish of all kinds from the grounds which he has occupied, and shall leave the site of work clean and in good condition.

### **32. DEFECTS**

If during inspection and testing pursuant to Section 14 hereof, there shall appear any defect in the Work, materials, apparatus or workmanship of the Project or failure in the operation or performance of any part thereof or guarantees required hereunder due to the failure, neglect or refusal of the Contractor to comply with the terms and provisions of this Contract or the Specifications for the work, such defect or failure shall be repaired, restored, corrected or made good to the satisfaction of, and without cost to the Park District. All engineering, inspection, legal and other costs and expense to the Park District occasioned by or resulting from such defect or failure shall be paid for by the Contractor upon demand by the Park District.

### **33. REPAIRS BY OWNER**

If within five (5) calendar days after notice from the Park District to the Contractor to do so, the Contractor fails to repair, restore, correct or make good any defect or failure referred to in the paragraph hereto entitled "DEFECTS," the Park District shall have the right to do so at the expense of the Contractor and any engineering, inspection, legal and other costs and expenses incurred by the

## **GENERAL CONDITIONS - *continued***

Park District in so doing may be deducted from any money due the Contractor or otherwise collected at the option of the Park District.

### **34. ACCESS TO PUBLIC SERVICES**

Neither the materials excavated nor the materials or equipment used in the construction of the work shall be so placed as to prevent free access to all fire hydrants, valves, fire alarms and police call boxes in the vicinity.

### **35. WATER AND UTILITIES**

All water used in the work shall be clean and fresh and preferably from municipal or county mains, within the district served thereby.

Beyond the zone served by the municipal or county mains, the Contractor shall make all provisions necessary for supplying water of the required character and in ample volume to meet all the requirements of the Work.

The Owner will supply electrical disconnects. Electrical and other utilities including gas and water will be disconnected prior to commencement of the Project.

The Contractor shall pay for all utility services he may require.

### **36. SANITARY REGULATIONS**

Toilet accommodations shall be maintained in approved locations, properly screened from public observation and in a strictly sanitary manner. The Contractor shall obey and enforce all other sanitary regulations and orders, and shall take precautions against infectious diseases, and the spread of same, and shall maintain at all times satisfactory sanitary conditions on all parts of the Work. Housing and toilet accommodations shall be furnished and maintained at the Contractor's expense.

The Contractor shall vigorously prohibit the committing of nuisance upon the lands of the Metropolitan Park District or upon adjacent private property, and any employee of Contractor or any Subcontractor found guilty of violating these provisions shall be removed when so ordered.

### **37. LINES AND GRADES**

All work under this Contract shall be built in accordance with the lines and grades shown on the Plans or as given by the Park District. These lines and grades may be modified, as provided in the Contract. The Contractor will be required to furnish line and grade boards or stakes and to accurately preserve any and all lines, grades, etc., of the work until authorized to remove them.

Figured dimensions and elevations on the Plans shall be taken as correct, but shall be checked by the Contractor before starting construction. Any errors, omissions, or discrepancies shall be brought to the attention of the Construction Manager and necessary corrections made. All notes on the Plans shall be followed.

### **38. CARE AND PROTECTION OF WORK**

From the commencement of the Work and until its completion and final acceptance, the Contractor shall be solely responsible for the care and protection of equipment and materials intended to be used in the Work, and of completed work and work in progress, against damage from any cause.

## **GENERAL CONDITIONS - *continued***

He shall take suitable precautions and provide adequate means at all times to accomplish these purposes.

### **39. TRAFFIC REGULATIONS**

The Contractor will be required to conduct his work in such a way that street traffic will be interfered with as little as possible.

### **40. PUBLIC SERVICE STRUCTURES**

Public service structures shall be understood to include all poles, tracks, pipes, wires, conduits, house service connections, vaults, manholes and other appurtenances, whether owned or controlled by the Park District or other public bodies or by privately owned corporations, used to supply the public with transportation, heating, electric, telephone, water, sewer or other services.

At least one week in advance of breaking ground, the Contractor shall notify the Park District, public bodies and other owners of such facilities of the proposed location of his operations, advising them that their property may be affected and that such measures as they may deem necessary should be promptly taken to protect, remove and/or rebuild them.

Three (3) conditions, which may be encountered, will be dealt with as follows:

**A.** Structures which are adjacent to but not included within the limits of excavation required for the performance of the Work shall be acceptably protected, supported and maintained by the Contractor at his expense.

**B.** Structures within the limits of the Work which can be satisfactorily supported and maintained in service and which do not require removal and rebuilding, shall be thus supported by the Contractor at his expense, including cost of repair of damage incidental to his operations.

**C.** Where it becomes necessary, in the judgment of the Park District, to remove and/or rebuild, or to relocate structures, within the limits of the work, the Contractor shall make all necessary arrangements with the Owner of the facilities affected for performing adjustments. All Work shall be done in a manner that properly protects the public and the Work. No separate payment shall be made for this work. All the costs shall be borne by the Contractor and included in his unit prices bid for the Work items involved.

Supports for water and gas mains, sewers, conduits and similar structures shall be constructed of timber or other acceptable material, shall be supported from undisturbed foundations and shall be sufficiently substantial to insure against settlement when the pipe trench is backfilled.

The Contractor shall assume full responsibility for maintaining service and shall support and protect, or remove and rebuild them at his own expense. Such services shall not be interrupted for more than two (2) hours without special permission.

### **41. MATERIALS AND SUBSTITUTIONS**

Wherever possible, several makes of material and apparatus have been specified, any one of which will be acceptable to the Owner. The Bid shall be based on the use of any one of the makes specified.

## **GENERAL CONDITIONS - *continued***

Whenever the term "approved", "approved equal" or "similar to" are used in this specification, the Successful Bidder shall make written application for the approval of the material or apparatus he prefers to use within two (2) weeks after signing the Contract, and before ordering any material requiring approval.

### **42. DEFENSE OF SUITS**

In case any action at law or suit in equity may or shall be brought against the Metropolitan Park District or any of its officers or agents for, or on account of, the failure, omission, or neglect of the Contractor or his subcontractors, or their agents to do and perform any of the covenants, acts, matters or things by this Contract undertaken to be done or performed by them or for the injury or damage caused by their negligence, or alleged negligence, the Contractor shall indemnify and save harmless the Owner, its officers and agents of and from all loss, cost, damage, expense, judgment or decrees whatever, arising out of such actions or suits as may or shall be brought as aforesaid.

### **43. SEQUENCE AND PROGRESS OF WORK**

The Park District shall have the power to direct the order and sequence of the Work, which in general shall be such as to permit the entire work to proceed as rapidly as possible, and to bring the several parts of the Work to a successful completion at about the same time. If at any time before the commencement or during the progress of the Work the materials and equipment appear insufficient or improper for securing the quality of work or rate of progress required, the Contractor, if so ordered by the Park District, shall make necessary corrections, but the failure of the Park District to issue such order shall not release the Contractor from any of his obligations.

Any ordered modifications in the sequence or order of procedure, or of any materials or equipment, shall not entitle the Contractor to an extension of time or to extra compensation, unless specifically authorized in writing under the applicable provisions of the Contract.

Whenever the Contractor is compelled to suspend work on this Contract on account of winter weather, he shall provide and maintain such cinder or board walks and drives as are necessary to accommodate the public and the residents on the street until resumption of work. Should the Contractor fail to provide such conveniences within a reasonable time after suspension of the Work, the Park District will do so at the Contractor's expense.

### **44. SUBCONTRACTORS**

Subcontractors shall conform to all of the provisions set forth in the contract to which their work applies and which relate thereto and must comply with all of the applicable requirements of this contract.

### **45. LAWN, SHRUBBERY AND TREES**

The Contractor shall not injure, damage or destroy any lawn, shrubbery, trees or other vegetation in the vicinity of the proposed work, except as may be permitted by the Park District for the purpose of construction.

All trees and shrubs except those ordered to be removed shall be adequately protected by boxes or otherwise by the Contractor. No excavated material shall be placed so as to injure such trees and shrubs. Trees and shrubs destroyed by negligence of the Contractor or his employees shall be replaced with new stock of similar size and age, at the proper season, and at the sole expense of the Contractor.

## **GENERAL CONDITIONS - *continued***

Beneath trees or other surface structures, where possible, sewers or other pipelines may be built in short tunnels, backfilled with excavated materials, except as otherwise specified, and the trees or structures carefully supported and protected from damage.

Parkways shall be left in as good condition as before the commencement of the work. Where sod is removed it shall be carefully preserved and later replaced, or the area where sod has been removed shall be covered with a two inch (2") layer of good black dirt and seed with an approved grass mixture.

### **46. GENERAL GUARANTY**

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire use or occupancy of the premises by the Owner shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor or his sureties of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor or his sureties shall remedy any defects in the work, and pay for any damage to other work resulting therefrom which shall appear within a period of one year from the date of final acceptance. The Owner will give notice of observed defects with reasonable promptness.

### **47. HOLD HARMLESS CLAUSE**

The Contractor shall indemnify and save harmless the Owner from all suits and actions of every name and description brought against the Owner, or any officer of the Owner for or on account of any injury or damage to person or property arising from, or growing out of the construction of the Work, or the doing of any of the Work, and shall indemnify and save harmless the Owner from any and all suits and expense over and above the expense included in the contract price, for royalties or infringements on patents that may be involved in the construction of the appliances contracted for, or any of the parts thereof, or in the use of said appliances or any of the parts thereof hereafter, and the Contractor shall defend, at its cost and expense, any and all suits and/or actions of every kind whatsoever, that may be brought against the Owner by reason of the use of said appliances or any of the part thereof.

### **48. LIMITATION ON LIABILITY**

The Owner's total liability under this Agreement will be limited to and shall not exceed the amount set forth in the Auditor's or Treasurer's certificate accompanying this Agreement. Under no circumstances will the elected officials, officers, employees, board members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

### **49. NO WAIVER OF RIGHTS**

Neither the inspection by the Metropolitan Park District or any of its agents nor any order by the Owner for payment of money, nor any payment for or acceptance of the whole or any part of the Work by the Owner, nor any extensions of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of any provisions of this Contract, or of any power herein reserved to the Owner, or any right to damages herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. Any remedy provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided; and in addition to all other suits, actions or legal proceedings, the Owner shall also be entitled as of right to writ of injunction against any breach of any of the provisions of this Contract.

## **GENERAL CONDITIONS - *continued***

### **50. FINAL CLEANING AND FINAL INSPECTION**

Upon completion of the Work built under this contract or a part thereof, the Contractor shall thoroughly and systematically clean, and make further needed repairs to the structures. He shall at his own expense remove and properly dispose of all water, dirt, rubbish, bulkheads, and/or any other foreign substances. Any defects of any nature whatsoever shall be promptly corrected by the Contractor at his own expense. Final cleaning and repairing shall be so arranged as to be completed upon completion of the Work.

When the Contractor has finally cleaned and repaired the whole, or any portion of the Work, he shall notify the Owner in writing that he is ready for a final inspection and the Park District will thereupon inspect the Work.

In no case will the final statement described in Section 55 be prepared until the Contractor has complied with all the requirements set forth and the Park District has made its final inspection of the entire Work and is satisfied that the entire Work is properly and satisfactorily constructed in accordance with the requirements of the Contract.

### **51. PAYMENTS BY CONTRACTOR**

The Contractor shall pay (a) for all transportation and utility services not later than the [20th day of the calendar month following] the rendition of such services; (b) for all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of the cost thereof, not later than the [20th day of the calendar month following that in which] such materials, tools and equipment are delivered at the site of the project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the Work in or on which materials, tools and equipment are incorporated or used; and (c) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the Work performed by his subcontractors, to the extent of each subcontractor's interest therein.

The requirements of (b) and/or (c) of this paragraph may be waved or modified by the Park District for good cause shown by the Contractor and on terms and conditions approved by the Park District.

In addition to any and all other rights by this contract granted to or reserved by the Park District, if the Contractor shall at any time have failed, neglected or refused without just cause to pay for materials and labor furnished or services rendered to the Contractor included in any previous estimate paid by the Park District, the Park District may require the Contractor to pay or provide for the payment thereof prior to the payment of any estimate submitted for payment in accordance with the provisions of the paragraph herein entitled "PARTIAL PAYMENTS."

### **52. PAYMENTS**

In consideration of the faithful and satisfactory performance by the Contractor of all the conditions, provisions, and covenants of this Contract and the specifications, the Park District shall pay, and the Contractor shall receive the prices stipulated in the Proposal as full compensation for everything furnished or done by the Contractor under this Contract.

### **53. PARTIAL PAYMENTS**

The Park District will make a partial payment to the Contractor on the basis of a duly certified and approved estimate, in form and substance acceptable to the Park District, prepared and filed by the Contractor at the end of the preceding month and processed by the Park District, of the Work performed on the Project during the

## **GENERAL CONDITIONS - *continued***

preceding month under this Contract, but to insure the proper performance of this Contract, the Park District will retain amounts due on these estimates as follows:

**A.** Ninety-two percent (92%) of the estimates prepared by the Contractor and approved by the Park District shall be paid until the Project is fifty percent (50%) complete as evidenced by estimates amounting to fifty percent (50%) of the total contract price.

**B.** All work performed after the Project is fifty percent (50%) complete will be paid for at the rate of one hundred percent (100%) of the estimates submitted by the Contractor and approved by the Park District.

**C.** The Owner shall file and deliver certified true copies of estimates to [the public body or individual designated by the public body to perform the audit function.]

**D. BEFORE PAYMENT OF ANY ESTIMATE IS MADE, THE CONTRACTOR SHALL CERTIFY UNDER OATH:**

1. The names and addresses of all subcontractors furnishing labor, materials or services and of all persons furnishing material included in such estimate.

2. That all bills for material and labor included in the preceding estimates have been paid in full or a satisfactory explanation of any failure to do so, and

3. That all bills for material and labor included in such estimate have been or will be paid from the proceeds thereof.

### **54. PARK DISTRICT'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF**

In addition to the payment to be retained by the Park District, under the preceding provisions of these General Conditions, the Park District may withhold a sufficient amount of any payment otherwise due to the Contractor to cover (a) payments that may be past due and payable for just claims for labor or materials furnished in and about the performance of the work under this contract; (b) for defective work not remedied and (c) failure of the Contractor to make proper payments to his subcontractors.

The Park District shall disburse, and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party who is entitled to payment therefrom. The Contractor shall have no claim to any funds so disbursed, and such funds shall be credited against the amount owed to the Contractor. The Park District will render to the Contractor a proper accounting of all such funds disbursed in behalf of the Contractor.

### **55. FINAL PAYMENT**

Following final inspection of the work, as provided in the paragraph entitled "FINAL CLEANING AND FINAL INSPECTION," and acceptance of the Work by the Park District as Finally Completed, remaining funds shall be paid to the Contractor within thirty (30) days of either acceptance or occupancy by the Park District.

A final statement of the Work done under the Contract and the value thereof shall be prepared by the Contractor and approved by the Park District. Unless this final statement shall be found



## **GENERAL CONDITIONS - *continued***

incorrect by the Park District, the Park District shall pay the Contractor the entire amount due under this Contract. All prior estimates and payments shall be subject to correction in the final statement and payment, but in the absence of error or manifest mistakes, it is agreed that any estimate on the certificate of the Director, when approved by the Park District, shall be conclusive of the work done and materials furnished as shown therein. Before the final payment is made, the Contractor must satisfy the Park District that all claims for labor and materials employed on or used in the performance of this Contract have been paid and discharged by completing a Waiver of Lien.

The Prevailing Wage Rate Affidavit for Contractor and Sub-contractor shall be submitted on the form provided.

The provisions of the paragraphs hereof entitled "DEFECTS" and "REPAIRS BY OWNER" shall apply to any defect in the work, materials, apparatus or workmanship of the Project or failure in the operation or performance of any part thereof or guarantees required hereunder determined by the Park District to have occurred, developed, or appeared prior to final acceptance of the Work.

### **56. FINAL PAYMENT TO RELEASE OWNER**

The acceptance by the Contractor of the final payment shall be and shall operate as a release to the Park District of all claims and liability to the Contractor for all things done or performed or relating to the work, and for every act and neglect of the Owner and others relating to or arising out of the Work. No payment, final or otherwise, shall operate to release the Contractor or his sureties from any obligation upon or under this Contract or the Performance and Labor/Materials Bonds.

### **57. INSURANCE**

The Contractor shall procure and maintain during the life of this Contract the types and amounts of insurance hereinafter described. The Contractor shall provide satisfactory proof of the required insurance coverage by providing to the Park District a copy of the policies or certificates of insurance before the Work is commenced.

#### **A. Workers' Compensation Insurance**

(i) The Contractor shall take out and maintain throughout the life of this Contract, workers' compensation insurance for all of his employees at the site of the Work. Contractor shall require all subcontractors to provide Workers' Compensation insurance for all their employees unless such employees are covered by the protection afforded by the Contractor. Copies of all insurance certificates shall be submitted to the Owner prior to the start of construction.

(ii) Contractor certifies that within the past nine months he/she has paid all contributions or made all payments in lieu of contributions as required by Ohio law for workers' compensation and unemployment compensation. He/she has not engaged any workers, as independent contractors, for whom workers' compensation and/or unemployment compensation contributions or payments in lieu of contributions are required to have been made.

#### **B. Public Liability, Property Damage and Automobile Insurance**

(i) General – Contractor shall take out and maintain during the life of this contract such public liability and property damage insurance as shall insure the Contractor and the Owner against liability for damages because of bodily injury, sickness, or disease, including death resulting therefrom, or injury to or destruction of property, caused by or arising out of operations under this

## **GENERAL CONDITIONS - *continued***

contract, whether such operations are carried on by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them; and the Contractor shall also take out and maintain, or shall cause each subcontractor performing or engaging to perform, work covered by this contract to take out and maintain, similar public liability and property damage insurance insuring such subcontractor, the Contractor, and the Owner against legal liability for any such damages caused by or arising out of the operation of such subcontractor or caused by anyone directly or indirectly employed by such subcontractor. Each such policy of insurance shall be in form and in companies satisfactory to and approved by the Owner. Each such policy shall provide coverage for the contractual liability assumed under the Hold Harmless Clause as set forth in this contract, and shall also provide coverage for the hazards described in this section.

Coverage under this section shall be as follows:

Bodily Injury: \$1,000,000 each person; \$3,000,000 aggregate

Property Damage: \$1,000,000 each occurrence; \$3,000,000 aggregate

Automobile Liability: Bodily Injury - \$1,000,000 each person; \$1,000,000 each accident; property damage - \$1,000,000 each occurrence

Umbrella Excess Liability: \$3,000,000 over primary coverage; \$10,000 retention

(ii) Public Liability Insurance - Contractor shall provide to Owner a copy of the insurance policies described above upon execution of this Contract, and upon any change or renewal thereof. The Contractor hereby agrees to indemnify the Park District for all claims arising solely from negligent acts, errors or omissions of the Contractor in the performance of the services under this agreement and names the Park District as an additional insured on the Contractor's insurance. All policies provided hereunder shall require the insurer to provide to the Park District a notice of cancellation of insurance no less than 30 days prior to cancellation. The Contractor agrees to supply the Park District with builders risk insurance or an installation floater for any new construction or renovations.

(iii) All Risk Builders Risk Insurance/Installation Floater (when applicable): The Contractor shall also take out and maintain during the life of this contract an All Risk Builders Risk Insurance/Installation Floater. Such insurance shall be in an amount which may vary with the extent of the Work completed but shall, at all times, be at least equal to the amount theretofore paid by the Owner on account of work and materials plus the value of work and materials furnished or delivered, by the Contractor but not paid for by the Owner. Each such policy shall be issued in the names of the Park District and the Contractor as joint insured's, and shall remain in full force and effect until unconditional acceptance of the Project by the Park District.

### **58. WAGE RATES – DAVIS BACON ACT**

The Contractor shall use only the classifications and wage rates set forth in the United States Department of Labor (USDOL) wage decision. Refer to Item 15 – PN 061 – 07/09/2009 – Wage Scale on all Federal-Aid Projects included in attached **2020 ODOT Federal Bid Document Template**.

### **59. PRE-CONSTRUCTION MEETING**

As soon as possible after the award of the contract, and before construction is initiated, a meeting between the Owner and the Contractor shall be scheduled to discuss the current site conditions, work schedule, bid documents, subcontractors, necessary permits, hourly wage rates, and affirmative action policy.

## **GENERAL CONDITIONS - *continued***

### **60. PROJECT LABOR AGREEMENT**

Within 14 days after the award of the contract, and before construction is initiated, the Contractor shall meet with the Northwestern Ohio Building Construction and Trades Council for the purpose of conducting a pre-job meeting and executing a Project Labor Agreement substantially similar to Exhibit A attached. All subcontractors shall be included as parties to the Project Labor Agreement, and must sign the Project Labor Agreement before beginning any work on the Project.

### **61. INTERFERENCE WITH OTHER WORK**

The Contractor will be required to inform himself fully of any other work being carried on by other contractors, utility companies and the Metropolitan Park District, at or near the Project site, and shall take precautions and plan his work in such a manner that the least possible interruption or interference of other work will result.

### **62. PARK VISITORS**

The Contractor shall plan, schedule and perform all work under the contract in such a manner as to assure minimum interference with visitors' movement within the vicinity of construction.

### **63. SAFETY**

The Contractor shall take whatever precautions are necessary to protect park visitors from harm. Proper barricades, lighting, signs, or other apparatus will be utilized as necessary.

### **64. COMPLIANCE AND ENFORCEMENT OF REGULATIONS**

**A.** It is the responsibility of the Contractor to monitor the enforcement of all local, state and federal regulations, including OSHA. The Contractor is responsible for the enforcement of said regulations. The Contractor must provide proper safety precautions, atmosphere, working conditions, etc., in accordance with all controlling regulations, for all workers and required inspections by all personnel employed by the Contractor, the Owner, any engineer on the Project and inspectors of controlling agencies. The Contractor shall supply the Park District with the name of his/her OSHA Compliance Officer. The Contractor may also be required to supply the Park District with workers' compensation reports for the previous three years.

**B.** The Contractor will be responsible for notifying the Ohio Utilities Protection Service and the Ohio Environmental Protection Agency prior to any digging or demolition of structures.

**C.** The Contractor shall ascertain that all completed installations comply with state laws, local ordinances and regulations relating to the performance of the work and the protection of adjacent property.

### **65. SUBCONTRACTORS**

No subcontracting shall be allowed without prior written approval by the Owner.

### **66. DISPUTE RESOLUTION AND ADMINISTRATIVE CLAIM PROCESS**

The Metroparks Dispute Resolution and Administrative Claim Process is premised on the partnering approach to construction administration and must be adhered to by the Contractor in order to resolve disputes on the project and in order to seek additional compensation or contract time from Metroparks in the form of an Administrative Claim.

## **GENERAL CONDITIONS - *continued***

### **Disputes and Claims**

Disputes include disagreements, matters in question, and differences of opinion between Metroparks personnel and the Contractor. Claims are disputes that are not settled through steps 1 and 2 of the Dispute Resolution and Administrative Claim Process and for which the Contractor has documented costs or time incurred as a result of such disputes.

Disputes and claims subject to review by Metroparks include:

1. Interpretation of specifications, standard drawings, plans, proposals, working drawings, change orders authorized by Metroparks' Board of Park Commissioners, and orders by Metroparks personnel having authority over the Project, provided that such orders have been authorized in accordance with Ohio law.
2. Differing site conditions as defined in ODOT Construction and Material Specification (ODOT Spec.) 104.20.B.
3. Cost and time incurred by:
  - a. Suspension of work pursuant to ODOT Spec. 104.02.C.
  - b. Significant changes in character of work pursuant to ODOT Spec. 104.02.D.
  - c. Utility interference with work pursuant to ODOT Spec. 105.07 and utility notes.
  - d. Extra work ordered pursuant to ODOT Spec. 104.02.F. and the policy on Change Orders.
  - e. Acts or inaction of Metroparks or other government agencies.
4. Contract time extensions due to weather, shortages of labor, equipment, or materials, or other causes beyond the Contractor's control as defined in ODOT Spec. 108.06.
5. Other subjects mutually agreed upon by Metroparks and the Contractor to be within the scope of the Dispute Resolution and Administrative Claim Process.

### **Process:**

The Contractor must exhaust the Metroparks Dispute Resolution and Administrative Claim Process prior to seeking additional compensation or contract time by filing an action in any appropriate Court located in Lucas County, Ohio. The following procedures do not compromise the Contractor's right to seek relief in any appropriate court located in Lucas County, Ohio.

All parties to the dispute must adhere to the Dispute Resolution and Administrative Claim Process. Metropark personnel involved in second or third tier reviews will not consider a dispute until the previous tier has properly reviewed the dispute and issued a decision. The Contractor's personnel shall not contact Metropark personnel involved in a second or third tier review until a decision has been issued by the previous tier.

Failure to meet any of the timeframes outlined below or to request an extension may terminate further review of the dispute and may serve as a waiver of the Contractor's right to follow a claim.

### **Continuation of Work:**

The Contractor shall continue with all work, including that which is in dispute. Metroparks will continue to pay for work pursuant to the terms of this Contract.

## **GENERAL CONDITIONS - *continued***

### **Tier 1 (On-Site Determination):**

The Construction Engineer shall meet with the Contractor's superintendent within two (2) working days of receipt of the Contractor Written Early Notice set forth in ODOT Spec. 104.02.G. They shall review all pertinent information and contract provisions and negotiate in an effort to reach a resolution according to the Contract Documents. The Construction Engineer will issue a written decision of Tier 1 within fourteen (14) calendar days of the meeting. If the dispute is not resolved, the Contractor must either abandon or escalate the dispute to Tier 2.

### **Tier 2 (Dispute Resolution Committee):**

Within seven (7) calendar days of receipt of the Tier 1 decision, the Contractor must submit a written request for a Tier 2 meeting to Lucas County Engineer's Chief Deputy Engineer. The Chief Deputy Engineer will assign the dispute a dispute number. The dispute number will consist of the project number, followed by a hyphen and then the number of disputes on this project that this dispute represents. Within fourteen (14) calendar days of receipt of the request for a Tier 2 meeting, the Contractor shall submit the Dispute Documentation as follows:

1. The Contractor shall submit three (3) complete copies of the documentation of the dispute to the Chief Deputy Engineer.
2. The Dispute Documentation shall be identified on a cover page by county, project number, Contractor name, subcontractor or supplier if involved in the dispute, and dispute number.
3. The Dispute Documentation shall be an original document that clearly, and in detail, gives the required information for each item of additional compensation and time extension requested.
4. A narrative of the disputed work or project circumstance at issue. This section must include the dates of the disputed work and the date of early notice.
5. References to the applicable provisions of the plans, specifications, proposal, or other Contract Documents. Copies of the cited provisions shall be included in the Dispute Documentation.
6. The dollar amount of additional compensation and length of contract time extension being requested.
7. The cost of supporting documents that served as the basis for the requested compensation stated in number six (6) above.
8. A detailed schedule analysis must be included in the Dispute Documentation for any dispute concerning additional contract time, actual or constructive acceleration, or delay damages. At a minimum, the schedule analysis must include the Schedule Update immediately preceding the occurrence of the circumstances alleged to have caused delay and must comply with accepted industry practices. Failure to submit the required schedule analysis will result in the denial of that portion of the Contractor's request.
9. Copies of relevant correspondence and other pertinent documentation.

Metroparks shall establish a Dispute Resolution Committee (DRC) which shall be responsible for hearing and deciding disputes at the Tier 2 level. The DRC must include the Lucas County Engineer and the Lucas County Engineer's Administrative Deputy.

To prepare for the DRC meeting, the Chief Deputy Engineer will create a file on the dispute and assign a person to review and manage the dispute. This manager will advise Metroparks on the status of the dispute.

The DRC shall meet with personnel from the Contractor's headquarters and consider the dispute within fourteen (14) calendar days of receipt of the Contractor's Dispute Documentation. The DRC will issue a written decision of Step 2 within fourteen (14) calendar days of the meeting. If the dispute is not resolved, the Contractor must either abandon or escalate the dispute to Tier 3.

## **GENERAL CONDITIONS - *continued***

Tier 3

If not resolved, go through the proper legal proceedings through the appropriate court located in Lucas County, Ohio.

### **67. NON-DISCRIMINATION – CONTRACTOR AGREES:**

**67.1** That in the hiring of employees for the performance of Work under this Contract or in any subcontract, neither the Contractor, subcontractor, or any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizens of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

**67.2** That neither the Contractor, any subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, creed, sex, handicap or color.

**67.3** That there shall be deducted from the amount payable to the Contractor by the Owner under this Contract a forfeiture of Twenty-five Dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.

**67.4** That this Contract may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

### **68. RIGHT TO AUDIT**

The Park District, the State Auditor or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor for the purpose of audit, examination, excerpts and transcriptions.

### **69. DRUG-FREE WORKPLACE**

Contractor must comply with the drug-free workplace requirements of Ohio Revised Code Section 153.03, and cause all of its subcontractors to comply with said requirements.

### **70. NOTICE OF COMMENCEMENT**

Contractor shall assist Owner with the preparation of a notice of commencement for the Project.

### **71. LIQUIDATED DAMAGES.**

If the Contractor has not completed the Work by the Date for Substantial Completion, the Contractor shall pay the Owner (and/or the Owner may setoff from sums coming due the Contractor) liquidated damages in the per diem amounts set forth in Exhibit A attached hereto. In addition to the Owner's right to liquidated damages, the Contractor shall indemnify, defend, and hold the owner and its employees, officers, directors and trustees harmless from any delay, acceleration, loss of productivity, or other claims relating to or resulting from delays caused by the Contractor and from all costs and expenses incurred as a result of such claims, including, but not limited to, attorneys' and consultants' fees.

## **GENERAL CONDITIONS - *continued***

The Contractor acknowledges that such amounts of liquidated damages represent a reasonable estimate of the actual damages that the Owner would incur if the Work is not substantially complete by the Date of Substantial Completion. The foregoing liquidated damages represent the loss of or interference with the intended use of the project for which the Work is being performed.

### **EXHIBIT A** **LIQUIDATED DAMAGES**

Liquidated damages shall be \$500.00 per day.





## **SPECIAL CONDITIONS**

### **1. PROJECT LOCATION**

The work specified herein is located at 1001 Front Street, Toledo, Ohio 43608

### **2. UNDERGROUND UTILITIES**

Before work is initiated, the contractor shall call Ohio Utilities Protection Service at 1-800-362-2764.

### **3. BIDS DUE**

**Bids for this project shall be received by 3:00 p.m., local time, Friday, November 20, 2020, Fallen Timbers Field Office, 6101 Fallen Timbers Lane, Maumee, Ohio 43537.**

### **4. INFORMATION**

For additional information, please contact Jon Zvanovec @ 419-360-9184, [jon.zvanovec@metroparkstoledo.com](mailto:jon.zvanovec@metroparkstoledo.com).

### **5. WORK INCLUDED IN CONTRACT**

The proposed work consists of construction of a 12' wide x 0.68 mile asphalt bike path connection from Main Street to Marina Drive including a 110' x 20' pedestrian bridge over Main Street. General construction includes erosion control; storm drainage; asphalt and concrete pavement; segmental and cast-in-place concrete retaining walls; concrete bridge abutments; steel bridge with concrete deck; railings; landscape plantings, trellises & planters (the "Project"). All work shown within the limits of work except where identified as not in contract (NIC) shall be the responsibility of the contractor.

### **6. UNIT PRICE DESCRIPTION**

Unit prices are submitted as basis of payment for ODOT pay items related to all construction work. The unit price shall be complete including all labor, materials, necessary tools, expendable equipment, insurance, utilities, transportation, and other services necessary to perform the work required for completion of said construction.

### **7. WASTE MANAGEMENT**

The contractor shall supply trash dumpsters for the removal of trash, rubbish, and debris resulting from the work of the contract. Contractors should recycle where feasible. Proof of proper recycling or disposal is required for work at each property. Please provide the Metroparks with a copy of the shipping papers or manifests for wastes disposed of or recycled from its properties. All wastes must be placed in containers and properly labeled for disposal.

Contractor shall provide and maintain all Danger/Caution Construction Area signs in and around the work area. The contractor must take action to preserve any adjacent buildings or structures from any damage during the project. Contractors must field verify the dimensions of the project. .

## **SPECIAL CONDITIONS – *continued***

### **8. WORK NOT INCLUDED IN CONTRACT**

Work relating to disturbance of existing Hazardous Materials, such as asbestos, PCB, etc., is not within the scope of this work. If contractor encounters materials known or suspected to contain a hazardous product, they shall advise the owner of the findings for determination of proper disposition. Any such hazardous materials shall not be incorporated in this work.

### **10. PERMITS**

The Contractor shall obtain and pay for all permits and licenses, including permits to demolish and build, and give all necessary legal notices, and pay all fees required for the work. The Contractor shall provide copies of permits to the Owner prior to commencing work and demoing of buildings. Confer with the Owner prior to applying for permits as permitting is often initiated early by the Owner/Architect.

### **11. COMPLETION DATE**

Date for Substantial Completion. Each successful bidder shall have its work on the project substantially completed (as "Substantial Completion" is defined in the Contract Documents) by **Sunday, October 31, 2021** (the "Date for Substantial Completion"). The Date for Substantial Completion may be extended only by Change Order or other modification signed by the Park District. By submitting its bid, the bidder agrees that the period for performing the work is reasonable.

The term "SUBSTANTIAL COMPLETION" – shall mean when the work is sufficiently complete in accordance with the Contract Documents to allow the Owner to occupy or utilize the work for its intended use without further disruption, as determined by the Park District's inspection.

Liquidated damages shall be \$500.00 per day.

### **12. SEQUENCING AND WORK SCHEDULE**

The project shall abide by the following regulatory schedule restrictions:

Trees (woody stems greater than 3 inches diameter at breast height and greater than 10 feet tall) must NOT be cut between April 1 and September 30, of any year.

Project construction is allotted 120 calendar days commencing from the date of execution of the construction contract and must end by the date for Substantial Completion – August 31, 2020. The contractor shall furnish a detailed project schedule to the owner prior to commencing work.

### **13. REVIEW OF FACILITIES**

Bidders are encouraged to visit the project site during normal park hours of dawn 'til dusk so they may see the scope of work and the site conditions that should be considered in submitting bids. Site visitors must respect the many trail neighbors by limiting vehicle usage and noise within the right of way. Site visitors must be courteous and professional in all dealings with neighbors. Bidders may access staff by dialing the Oak Openings Preserve Metropark Duty Ranger cell phone @ (419) 360-9179 or West Region's operations manager Craig Elton at 419.779.2904.

## **SPECIAL CONDITIONS – *continued***

### **14. MANUFACTURER WARRANTY**

All construction on the project shall conform to the building material manufacturer & architect's suggested details & methods of installation and result in the full manufacturer warranty available for each building material. The contractor shall furnish the owner with the appropriate warranty's, signed & executed in writing, originating from the building material manufacturer.

### **15. PUBLIC MEETING**

If applicable, the Contractor will be present at any public meeting with project stakeholders (neighbors) prior to commencing work to support the owner and communicate project details and answer questions relating to the project's construction. Typically, this open-house style meeting will take place in one day for approximately three hours. Typically, the owner will provide visual aids in the form of mounted drawings. Typically, the meeting will be held in a public library or local church.

## **EXHIBIT A – PROJECT LABOR AGREEMENT – *Appendix A***

10 Page Project Labor Agreement Example Attached...

# **PROJECT LABOR AGREEMENT**

Between

---

(Contractor)

And

**NORTHWESTERN OHIO BUILDING AND CONSTRUCTION  
TRADES COUNCIL**

Covering

---

(Project Name)

## **PROJECT LABOR AGREEMENT**

This Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between, \_\_\_\_\_ (“Contractor”), acting on its behalf and on behalf of all “Contractors” as herein defined, and the Northwestern Ohio Building & Construction Trades Council (“NWOBCTC”), acting on its own behalf and on behalf of all affiliates and members whose names are subscribed hereto, and who have, through their duly authorized officers, executed this Agreement, (“Union”) with respect to the construction of the \_\_\_\_\_ project located in \_\_\_\_\_, Ohio, the total overall project cost of which is greater than \$50,000 (“Project”).

The term “Contractor” shall include all construction contractors and subcontractors of whatever tier engaged in construction work within the scope of this Agreement. The term “applicable local collective bargaining agreement” means the labor agreement of an affiliated local union to the NWOBCTC that covers the work being performed on the Project within its work jurisdiction/scope of work.

The Unions and all signatory Contractors agree to abide by the terms and conditions contained in this Agreement.

### **ARTICLE I INTENT AND PURPOSE**

- 1.1 The Parties to this Agreement express through this Agreement their mutual and sincere commitment to the families and quality of life within Northwest Ohio by; (a) helping to ensure that the 12,000-plus building tradesmen and their families directly benefit from the construction of the region’s public and civic infrastructure; (b) supporting the investment made in training local building tradesmen to ensure the highest quality construction, and (c) protecting the area standards for wages and benefits realized through the process of collective bargaining by imposing union scale for all work covered by this Agreement.
- 1.2 The Owner, Contractor(s), and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together cooperatively to furnish skilled, efficient, craftsmen who, whenever possible, reside in the local area. The intent and understanding of the parties is to maximize the employment opportunities of skilled craftspeople living within the local area.

- 1.3 The purpose of this Agreement is to establish conditions for the prompt and efficient completion of construction work on the Project and to secure optimum productivity by providing close cooperation between the Employer and the Union. The Parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor-management cooperation and stability.
- 1.4 A primary incentive for entering into this Agreement is elimination of the risk of delays and disruption caused by labor disputes and unrest. This Agreement creates effective and binding methods for the settlement of all disputes or grievances, which may arise on the Project. There shall be no strikes, work stoppages or lockouts for any reason whatsoever.
- 1.5 Further, the parties recognize the advantages of this project-specific Agreement. In part, those benefits include standard work rules and prohibitions against strikes, lockouts, slowdowns, and other work stoppages during the course of construction. The parties recognize the need to minimize the impact of construction industry challenges such as the short-term nature of employment, which makes post-hire collective bargaining difficult, and to address the contractor's need for predictable costs and a steady supply of skilled labor.

## **ARTICLE II**

### **SCOPE OF AGREEMENT**

- 2.1 This Project Agreement shall apply to all work recognized and accepted within historical definitions of construction work under the direction of and performed by the Contractor(s), of whatever tier who have contracts awarded for such work on the Project. Such work shall include site work and dedicated off-site work.
- 2.2 The scope of work includes all work assigned by the Owner to the Contractor(s). To the extent any work covered by a Contractor's construction contract for the Project entails work beyond the historical definition of "construction work," including but not limited to off-site fabrication, assembly, insulation, skids, modules, manufacture and related preparatory work, all Contractors agree to pay their employees not less than the wage and fringe benefit rates set forth in the applicable local collective bargaining agreement. Any such work to be subcontracted shall only be subcontracted to contractors who pay their employees for such

work at wage and fringe benefit rates not less than those set forth in the applicable local collective bargaining agreement.

- 2.3 All work within the scope of this Project Agreement shall be performed only by contractors and subcontractors that are signatory to this Project Agreement. The Owner shall require all Contractors of whatever tier, as a condition of being awarded contracts for work covered by this Agreement, to accept, execute and be bound by the terms and conditions of this Project Agreement prior to commencing work on the Project. The Contractor is responsible for ensuring that its subcontractors become signatories to this Agreement and abide by its terms.
- 2.4 The terms and conditions of the applicable local collective bargaining agreements covering the craftwork being performed shall govern the terms and conditions of employment of employees on the Project, other than as explicitly set forth here.
- 2.5 It is further agreed that, where there is a conflict, the terms and conditions of this Project Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article IV (No Strikes and No Lockouts); Article VI (Settlement of Grievances and Disputes); and Article VII (Jurisdictional Disputes) of this Project Agreement, which shall apply to such work.

### **ARTICLE III**

#### **UNION RECOGNITION**

- 3.1 The Contractor(s) recognize the Union(s) as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.
- 3.2 All employees while covered by this Agreement: (1) in the employ of the Contractor at the time the Contractor enters into this Agreement shall, on the 8<sup>th</sup> day of employment hereunder, become members in good standing of the union, and so remain during the term of this Agreement; (2) hired by the Contractor after entering into this agreement shall, during the term of this Agreement, be hired according to the terms and conditions of the applicable local collective bargaining agreement and, as a condition of employment, shall become members in good standing of the union on the 8<sup>th</sup> day of employment and so remain for the term of this Agreement.



- 3.3 Each employee shall be required to comply with the Union security clause set forth in the applicable local collective bargaining agreement for the duration of the Project.
- 3.4 Upon being presented with a written authorization form by an employee covered by this Agreement, the Employer will deduct from the wages of such employee and remit to the Union all initiation fees, dues, and representation fees in accordance with the signed authorization.
- 3.5 Any Local Union or District Council to the Project Labor Agreement shall pay per capita taxes to NWOBTC directly, which taxes shall equal the per capita in the Northwestern Ohio Building and Construction Trades Council Bylaws. Any Local Union or Council to this Project Labor Agreement that fails to make timely payments of per capita taxes within 30 days of the date such are due and payable shall be liable to NWOBTC for (1) all such outstanding payments, (2) an additional assessment equal to 10% of amount owed, and (3) all costs of collection incurred by this council, including attorney fees and court costs. Any collection efforts as a result of any Local Union or District Council's failure to pay any required per capita tax shall be in accordance with the procedures set forth in NWOBTC's Bylaws and are specifically excluded from Article VI herein.

#### **ARTICLE IV NO STRIKES AND NO LOCKOUTS**

- 4.1 The Union and its members, agents, representatives and employees shall not allow, incite, encourage, condone or participate in any strike, walkout, slowdown, picketing, sympathy strike or other work stoppage of any nature whatsoever for any cause whatsoever, whether jurisdictional or otherwise, or observe any picket of any nature during the term of this Agreement. Any such action by the Union or its members, agents, representatives and employees shall constitute a violation of this Agreement.
- 4.2 All employees shall continue to work and to perform all their obligations on the Project despite the expiration of any local collective bargaining agreement.

#### **ARTICLE V WAGES AND FRINGE BENEFITS**

- 5.1 Wages and fringe benefits to be paid for all work within the scope of this Agreement shall be the rates set forth in the applicable local collective bargaining agreement. The Contractor shall pay employees the prevailing

wage rate as set forth in R.C. Chapter 4115 for all work performed on the Project that is not covered by an applicable local collective bargaining agreement.

- 5.2 Upon notice to the Owner that a Contractor is delinquent in its obligation to make fringe benefit contributions, the Owner shall withhold such sums from the monthly progress payment(s) to the Contractor and shall pay such sums directly to the appropriate fringe benefit fund(s).
- 5.3 Any future wage or fringe benefit increases negotiated and established by an applicable local collective bargaining agreement shall be paid retroactively to the expiration of the preceding local agreement.

## **ARTICLE VI**

### **SETTLEMENT OF GRIEVANCES AND DISPUTES**

- 6.1 This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.
- 6.2 The Contractors, Unions and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.
- 6.3 Any question or dispute arising out of and during the term of this Project Agreement (other than trade jurisdictional disputes and disputes arising under Article III, Section 3.5) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours

thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The International Union Representative and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the American Arbitration Association to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of the American Arbitration Association shall govern the conduct of the arbitration hearing. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

6.4 The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

## **ARTICLE VII JURISDICTIONAL DISPUTES**

- 7.1 The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.
- 7.2 All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.
- 7.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.
- 7.4 Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

## **ARTICLE VIII SAFETY**

- 8.1 The Employer and their employees shall comply with all applicable federal and state laws, ordinances and regulations relating to safety and health. All employees shall comply with the reasonable safety regulations as established by the Employer.

## **ARTICLE IX UNION REPRESENTATION**

- 9.1 The designated representative(s) of each local union signatory to this Agreement shall be permitted to enter the Project site upon notification to the Employer. Such designated union representative(s) will be permitted on the Project site without an escort. The privilege to move unescorted on the Project site is extended to the designated union representative(s) upon

the understanding that such representative(s) will not disrupt the efficient operation of the Project and that the privilege will not be abused.

- 9.2 The Unions shall have the right to designate a working journeyman as a steward. Such designated steward shall be a qualified workman performing the work of that craft and shall not exercise any supervisory functions. There shall be no non-working stewards.
- 9.3 Visitors, including Union representatives and agents, shall not interfere with the work of the employees. In addition, they shall fully comply with the visitor safety and security rules established for the Project.

## **ARTICLE X HELMETS TO HARDHATS**

- 10.1 The Contractor and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractor and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by parties.
- 10.2 The Unions and Contractor agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project to the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

## **ARTICLE XI TERM OF AGREEMENT**

- 11.1 This Agreement shall become effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and shall remain in full force and effect as to each part or phase of construction work until all parts and phases have been accepted by the Owner.

## **ARTICLE XII INCLUSION**

- 12.1 The Parties intend for the Project to bring great opportunities for contractors as well as the local workforce. A principal goal of the Owner is

to ensure that, to the extent legally permissible, it uses Minority Business Enterprises and Women's Business Enterprises, which are qualified to perform work on the construction of the Project. The Owner's goal is to achieve a percentage, which the Owner reasonably arrives at and includes in its diversity plan, for MBE/WBE involvement for the construction of the Project, regardless of union affiliation. All minority participation is subject to inclusion in Owner's periodic reports to certain regulatory and legislative bodies.

- 12.2 The Parties agree to a goal of 15% Minority workforce, which are qualified to perform work on the construction of the Project.
- 12.3 The Parties agree to use their best efforts (including without limitation accommodation on fringe bonding and other financial hurdles) and cooperate in order to meet or exceed the above stated goals. The Union shall also provide the Owner, upon its request, with any data, statistics and/or information that the Union possesses, relating to the stated hiring goals. Further, in the event that the Union contractors are not available or qualified to meet the diversity goal or if they fail to utilize best efforts relative to diversity, the Union shall not object and it will not be a contract breach for the Owner to use non-union contractors for such work.

### **ARTICLE XIII INCLUSION ADVOCACY**

- 13.1 The Parties will mutually agree upon a system to monitor and enforce the inclusion commitments in this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, which shall be deemed effective as of the date stated in Article XI.

ON BEHALF OF THE CONTRACTOR:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

ON BEHALF OF THE UNIONS:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## **2020 ODOT FEDERAL BID DOCUMENT TEMPLATE – *Appendix B***

36 Page Federal Bid Document Template Attached...





**ODOT's LPA Template (ODOT Spec Book and LPA Spec Book)  
Required Contract Provisions.**

**1. ODOT'S 2019 CONSTRUCTION AND MATERIAL SPECIFICATIONS (C&MS) AND ITS SUPPLEMENTS**

**With the exception of Section 100 "General Provisions" included in the matrix below, ODOT's Construction and Material Specifications (CM&S) and its supplements are hereby incorporated by reference, in their entirety, as if rewritten herein. The incorporation of this document by reference does not interfere with the order of precedence set forth in Section 105.04 of the CMS Manual.**

In accordance with the Locally Administrated Transportation Projects Manual of Procedures (LATPM), when bidding this project, the Contractor should replace the terms "the Department", "the Engineer", "the DCE" and "the DCA" with the term "the Local Public Agency (LPA)." Furthermore, nothing in this document is intended to alter the LPA's adherence to Ohio Revised Code, local ordinance or other applicable requirements which are properly established.

<b>Excluded 2019 Specifications</b>			
Section 102.01	Section 103.01	Section 105.19	
Section 102.03	Section 103.02	Section 107.04	
Section 102.06	Section 103.04	Section 107.13	
Section 102.09	Section 103.05	Section 108.01	
Section 102.10	Section 103.06	Section 108.02(B)	
Section 102.11	Section 103.07	Section 108.02(E)	
Section 102.13	Section 104.02(A)	Section 108.02(G)	
Section 102.14	Section 105.05	Section 108.08	
Section 102.17			

**2. STEEL AND IRON PRODUCTS MADE IN THE UNITED STATES**

Furnish steel and iron products that are made in the United States according to the applicable provisions of Federal regulations stated in 23 CFR 635.410 and State of Ohio laws, and ORC 153.011 and 5525.21.

"United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States. Both the State and Federal requirements contained in (A.) and (B.) of this section apply to this contract.

**A. Federal Requirements.** All steel or iron products incorporated permanently into the Work must be made of steel or iron produced in the United States and all subsequent manufacturing must be performed in the United States. Manufacturing is any process that modifies the chemical content; physical shape or size; or final finish of a product. Manufacturing begins with the initial melting and mixing and continues through the bending and coating stages. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.

**B. State Requirements.** All steel products used in the Work for load-bearing structural purposes must be made from steel produced in the United States. State requirements do not apply to iron.

**C. Exceptions.** ODOT may grant specific written permission to use foreign steel or iron products in bridge construction and foreign iron products in any type of construction. ODOT may grant such exceptions under either of the following conditions:

1. The cost of products to be used does not exceed 0.1 percent of the total Contract cost, or \$2,500, whichever is greater. The cost is the value of the product as delivered to the project.
2. The specified products are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet the requirements of the Contract Documents. ODOT may require the Contractor to obtain letters from three different suppliers documenting the unavailability of a product from a domestic source, if the shortage is not previously established.

**D. Proof of Domestic Origin.** Furnish documentation to the Engineer showing the domestic origin of all steel and iron products covered by this section, before they are incorporated into the Work. Products without a traceable domestic origin will be treated as a non-domestic product.

### 3. **CERTIFICATION AGAINST DEBARMENT AND SUSPENSION**

The bidder hereby certifies by signing this proposal that, except as noted below, under penalty of perjury and under other such penalties as the laws of this state and the United States of America provide, that the company or any person associated there with in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds is **not** currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency; that the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds has **not** been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; that the company or any person associated therewith in the capacity of owner, partner, director, manager, auditor, or any position involving the administration of federal funds does **not** have a proposed debarment pending; that the company or any person associated there with in the capacity of owner, partner, director, officer, principal investigator has **not** been indicted, convicted, or had a civil judgment rendered against the company, or themselves by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are exceptions to any of the above clauses, please include a statement with the bid package detailing these exceptions.

Exceptions will not necessarily result in denial of award but will be considered in determining bidder responsibility. For any exception noted, indicate below to whom it applies, initiating agency and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. Execution of this proposal on the signature portion thereof shall constitute also signature of this certification as permitted by Title 28 United States Code, Section 1746.

### 4. **PREQUALIFICATION**

Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in force **at the time of bid, at the time of award, and through the life of the construction contract.** For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. The “prime” contractor must perform no less than 30 percent of the total original contract price.

### 5. **PN033 - 4/18/2008- AS PER PLAN DESIGNATION**

**(Not required by FHWA, but strongly suggested if As Per Plan is used by the LPA)**

For the last several years the “As Per Plan” designation has been added to some item descriptions in the proposal to assist the Contractors to easily identify standard items that have been altered by plan notes.

The “As Per Plan” designation has proven to be a very useful tool for the Contractors. However, its use was never intended to relieve the Contractors of their responsibility to read, bid and construct all items in accordance with all governing plan notes. Therefore, the absence of an “As Per Plan” designation on some item descriptions in the proposal for which there are clear and controlling plan notes does not relieve the Contractors of the responsibility to read, bid and construct those particular items in accordance with the governing plan notes.

Be advised that the item descriptions in the bidding proposal must be read or interpreted with the governing plan notes and the Construction and Material Specification Manual. A claim based upon an “order of precedence” basis will be denied. In the event that a conflict, either real or perceived, exists between the item description and the governing plan note, the Contractors are to request clarification through the pre-bid process.

## 6. **FEDERALLY REQUIRED EEO CERTIFICATION FORM**

The bidder hereby certifies that he **has** ....., **has not** ....., participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he **has** ....., **has not** ....., filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements. *The Bidder must circle the appropriate “has or has not” above.*

## 7. **PN 017 - 10/15/2004 - FEDERALLY REQUIRED EEO CERTIFICATION CLAUSE**

The Federally Required EEO Certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7 (b) (1)) and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontractors which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

## 8. **PN 026 - 10/15/2004 - CERTIFICATION OF NONSEGREGATED FACILITIES**

(a) Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (for a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder has agreed to the provisions of the “Certification of Nonsegregated Facilities” in this proposal. This certification provides that the bidder does

not maintain or provide for his employees' facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

*"Notice to Prospective Subcontractors and Material Suppliers of Requirement for Certification of Nonsegregated Facilities" -*

- (a) A Certification of Nonsegregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.
- (b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.
- (c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

**9. PN 003 - 10/15/2004 - TITLE VI RELATED STATUTES NON-DISCRIMINATION STATEMENT**

The LPA, under Title VI of the Civil Rights Act and related statutes, ensures that no person in the LPA, shall on the grounds of race, color, national origin, sex, disability or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers.

**10. CERTIFICATION OF COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAMS**

In accordance with Ohio Administrative Code §9.47, before any Contract is awarded, the LPA will require the Bidder to furnish a valid Certificate of Compliance with Affirmative Action Programs, issued by the State EEO Coordinator dated prior to the date fixed for the opening of bids.

**11. PN 020 – 11/21/2011 - NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

The Bidder's attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

Utilization goals applicable to the project, expressed in percentages, for minority and female participation for each construction craft can be found on ODOT's website at <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/default.aspx>. These goals are based on 2000 census data and represent the area, per craft, minority and female availability pool.

Minority and female utilization obligations by craft per county (applicable to project):

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CountyAvailability-ByTrade.pdf>

Statewide utilization obligations by craft (applicable to the Contractor's statewide workforce):

<http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/StatewideAverages-ByTrade.pdf>

**Effective 11/21/2011 the New Hire Definition will be as follows:**

An individual who has a break in service (not on an employer's payroll) for a period of 12 months or longer and the person affected is not a salaried employee but belongs to a union craft. Individuals compensated for training or incidental work which does not cause a break in unemployment compensation, i.e., paid by voucher check or petty cash, are considered new hires if the individual's break in service is 12 months or longer.

The time frame for a new hire shall be associated with the first project worked for that contractor regardless of whether it is public or private. When reporting new hires, the contractor shall identify that employee as a new hire on that specific project only. Subsequent work, barring a break in service of 12 months or more, would not qualify the employee as a new hire for that contractor.

The Contractor's compliance shall be based on the implementation of affirmative action obligations required by the specifications set forth in 23 CFR Part 230, and its good faith efforts to meet these obligations. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and females on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the affirmative action obligations shall be a violation of the contract and regulations in 23 CFR Part 230. The good faith efforts put forth by the contractor will be measured against the total work hours performed. Under FHWA, ODOT is the authority tasked with ensuring that the contractor adheres to the aforementioned regulations. In addition to complying with the Required Contract Provisions as outlined in the attached subcontract agreement the Contractor shall provide immediate written notification to the ODOT and the Prime Contractor when referral practices of the union or unions with which the Contractor has a collective bargaining agreement impede the company's efforts to meet its equal opportunity obligations.

The Office of Federal Contract Compliance Programs (OFCCP) administers and enforces equal employment opportunity laws that apply to Federal government contractors and subcontractors supplying goods and services, including construction, to the Federal Government under 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of VEVRAA. The OFCCP monitors compliance with these laws primarily through compliance evaluations, during which a compliance officer examines the contractor's affirmative action efforts and employment practices. Under Executive Order 11246, the OFCCP may perform contract compliance reviews on contractors involved with federally funded ODOT projects.

Requirements for affirmative action obligations governing OFCCP contract compliance reviews are those listed in the Federal Register for the Economic Area.

[https://www.dol.gov/ofccp/TAguides/new\\_contractors\\_guide.htm](https://www.dol.gov/ofccp/TAguides/new_contractors_guide.htm) page E-32

The Department of Administrative Services (DAS), Equal Opportunity Division, is responsible for ensuring state contractors implement and adhere to the State of Ohio's affirmative action program pursuant to Ohio Administrative Code (OAC) 123:2-3-02. Specifically, this unit's responsibilities include the issuance of certificates of compliance under ORC 9.47 and 153.08, conducting project site visits and compliance reviews (desk audits) to ensure contractors utilize minorities and women in the construction trades, as well as maintaining a working environment free of discrimination, harassment and intimidation. The DAS may perform contract compliance reviews on contractors involved with state funded ODOT projects. Requirements for affirmative action obligations governing DAS contract compliance reviews are those listed in the O.A.C. for the Metropolitan Statistical Area in which a project is located. <http://das.ohio.gov/Divisions/EqualOpportunity/ConstructionCompliance.aspx>

All prime and subcontractors regardless on the number of employees or the state contract amount are required to submit monthly utilization reports (Input Form 29) to Ohio Department of Administrative Services covering the contractor's total workforce within the state of Ohio. The reports must be filed electronically by the 10th of each month, beginning with the contract award and continuing until the contractor or subcontractor completes performance of the state contract. <http://das.ohio.gov/Divisions/EqualOpportunity/InputForm29.aspx>

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs, 200 N. High Street, Room 409, Columbus, Ohio 43215, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number of the subcontractor, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the subcontract is to be performed.

## 12. PN 029 - 10/15/2004 - ON-THE JOB TRAINING (OJT) PILOT PROGRAM

The requirements of this Training Special Provision supersede subparagraph 7b of the Special Provision entitled Special Employment Opportunity Responsibilities and implements 23 U.S.C. 140(a).

The following must be included as part of the Contractor's equal employment opportunity affirmative action training program:

The Contractor must provide on-the-job training aimed at developing full journey persons in the type or job classification in which they work.

The contractor is not required to have a specific number of trainees assigned to this project. The number of trainees will be distributed among the work classifications on the basis of the Contractor's needs and the availability of the journey persons in the various classifications. The Contractor will be credited for each trainee employed by him or her who is currently enrolled or becomes enrolled in an approved program.

Training and upgrading of minorities and women toward journey person status is a primary objective of this Training Special Provision. Accordingly, the Contractor must make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and will not be used, to

discriminate against any applicant for training, regardless of whether the applicant is a member of a minority group or not.

No employee will be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey person status or in which he or she has been employed as a journey person. The Contractor must satisfy this requirement by including appropriate questions in the employee's application or by other suitable means. Regardless of the method used, the Contractor's records must document the findings in each case.

The minimum length and type of training for each classification will be established in the training program selected by the Contractor.

No payment by the LPA will be made to the Contractor for providing this training. However, if the Contractor fails to provide adequate training and cannot show good faith efforts on its part to provide adequate training, it will be subject to a formal compliance review to determine the Contractor's efforts in meeting the EEO laws and regulations.

The Contractor must provide the following reports:

1. CR1 Report
  - A. To be completed on each trainee
  - B. To be filled out at the start of training and finish of training or at the end of the year, whichever comes first
  - C. To be submitted to the ODOT District in which the Contractor's home office is located.
2. Tracking will be on an annual basis. The Contractor must submit the subsequent CR1 to the ODOT District in which the Contractors home office is located.

The prime or subcontractor conducting the training must be involved in at least one Federal project per calendar year in order to get FHWA training credit. Participation in the OJT Program is not project or contract specific.

All Contractors are encouraged to participate in the OJT program. Such a program will be considered when examining the contractor's Good Faith Efforts toward meeting its contractual affirmative action obligations.

All Contractors shall submit their own Training Program or Apprenticeship Certificate, for approval, to the ODOT District in which the company's home office is located.

All OJT Trainees must have the appropriate certification. Apprenticeship Certificates can be obtained from the State of Ohio, Bureau of Apprenticeship and Training. The union apprenticeship agreement is not acceptable verification of an apprentice's enrollment in a union sponsored training program. A copy of the Apprenticeship Certificate along with a statement indicating the number of months/years the employee has been in the apprenticeship program must be submitted to the ODOT EEO Coordinator in the company's home district and to the prevailing wage coordinator in the district responsible for the project within 90 days of the apprentice beginning work on the project.

### **13. PN 059 - 10/15/2004 - WAGE DETERMINATION APPEALS PROCESS**

- 1.) Has there been an initial decision in the matter? This can be:
  - \* An existing published wage determination
  - \* A survey underlying a wage determination
  - \* A Wage and Hour Division letter setting forth a position on a wage determination matter
  - \* A conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response for this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determination  
Wage and Hour Division  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D. C. 20210

- 2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (see 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U. S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requester considers relevant to the issue.

- 3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

- 4.) All decisions by the Administrative Review Board are final.

#### **14. PN 061 –10/22/2012- WAGE SCALE ON ALL FEDERAL-AID PROJECTS**

The wage rates for this project were determined by the Secretary of Labor in accordance with Federal-Aid requirements. LPA must formally incorporate into contract documents.

*Contractors shall use only the classifications and wage rates set forth in the United States Department of Labor (USDOL) wage decision found at website noted below on payrolls submitted to the District Office. Additionally, please note that the wage modification in effect at the time of the project sale date, shall be used by all contractors.*

This USDOL wage decision may be viewed, by accessing the United States Department of Labor (USDOL) website at:

<http://www.wdol.gov/>

This contract requires the payment of the total of the basic hourly rates plus the fringe benefits payments for each classification in accordance with the following regulations which by reference are made part of this contract:



1) The U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution.

2) Form FHWA-1273 (most recent revision at contract execution) Part IV. Payment of Predetermined Minimum Wage and Part V. Statements and Payrolls.

The failure to pay prevailing wages to all laborers and mechanics employed on this project, shall be considered a breach of contract. Such a failure may result in the termination of the contract and debarment.

The Contractor and all subcontractors shall pay all wages and fringe benefits by company check. All payroll records and canceled pay checks shall be maintained for at least three years after final acceptance as defined in section 109.12 of the Ohio Department of Transportation Construction and Materials Specifications. The Contractor's and all subcontractor's payroll records and canceled pay checks shall be made available for inspection by the Department and the U.S. Department of Labor, upon request, anytime during the life of the contract, and for three years thereafter by the U.S. Department of Labor. Additionally, the Contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

The wage and fringe rates determined for this project shall be posted by the Contractor in a prominent and accessible place on the project, field office, or equipment yard where they can be easily read by the workers.

The Contractor and all subcontractors shall submit to the District Construction Office, certified payrolls each week beginning three weeks after the start of work. These payrolls shall be on a Form WH-347 or equivalent and shall show the following:

- 1) Employee name, address, classification, and hours worked.
- 2) The basic hourly and overtime rate paid, total pay, and the manner in which fringe benefit payments have been irrevocably made.
- 3) The project number and pay week dates.
- 4) Original signature of a company officer on the certification statement.

Additionally, a copy of the "Apprentice Certification" obtained from the Ohio State Apprenticeship Council, must accompany all certified payrolls submitted for all apprentices working on this project.

Please be aware that it is ultimately the responsibility of the Contractor to ensure that all laws relating to prevailing wages in the USDOL Regulations, Title 29, parts 1 and 5, are strictly adhered to by all subcontractors on the project.

If the Contractor or any subcontractor fails to comply with any of the provisions contained in this proposal note, the Department may terminate the contract, debar the Contractor or Subcontractor and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

**The applicable wage and fringe rates for this project are to be incorporated in their entirety as an attachment to the executed contract.**

## **15. LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING**

1. The prospective bidder certifies, by signing and submitting this bid proposal, to the best of his or her knowledge and belief, that:
  - (a.) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of

Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (b.) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- 2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 3. The prospective bidder also agrees by submitting his or her bid proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**16. PN 045 - 10/15/2004 - NON -COLLUSION AFFIDAVIT**

In accordance with Title 23 United States Code, Section 112 and Ohio Revised Code, Chapter 1331 et. seq: and Sections 2921.11 and 2921.13, the bidder hereby states, under penalty of perjury and under other such penalties as the law provides, that he or his agents or employees have not entered either directly or indirectly into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal. Execution of this proposal on the signature portion thereof shall constitute also signature of this Non-Collusion Affidavit as permitted by title 28 United States Code, Section 1746.

**REPORTING BID RIGGING**

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

**17. PN 014 - 10/15/2004 - DRUG-FREE WORKPLACE**

The prime contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace. The prime contractor shall make a good faith effort to ensure that all its employees, while

working on this project, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

The prime contractor shall also require that this contractual obligation be placed in all subcontractor and materialman contracts that it enters into and further requires that all subcontractors and materialmen place the same contractual obligations in each of their lower tier contracts.

**18. PN 034 - 05/25/2011 – DRUG FREE SAFETY PROGRAM**

During the life of this project, the Contractor and all its Subcontractors, that provide labor on the Project site, must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation ("OBWC") Drug-Free Safety Program ("DFSP") or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable Drug Free Workplace Program ("DFWP") approved by the OBWC, the LPA requires each Contractor and Subcontractor that provides labor, to subject its employees who perform labor on the project site to random drug testing of 5 percent of its employees. The random drug testing percentage must also include the on-site supervisors of the Contractors and Subcontractors. Upon request, the Contractor and Subcontractor shall provide evidence of required testing to the LPA.

Each Subcontractor shall require all lower-tier Subcontractors that provides labor on the project site with whom the Subcontractor is in contract for the Work to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to a lower-tier Subcontractor providing labor at the Site.

The LPA will declare a bid non-responsive and ineligible for award if the Contractor is not enrolled and in good standing in the Ohio Bureau of Workers' Compensation's DFSP Discount Program or a similar program approved by the Bureau of Workers' Compensation within 8 days of the bid opening. Furthermore, the LPA will deny all requests to sublet when the subcontractor does not comply with the provisions of this proposal note.

Failure of the Contractor to require a Subcontractor to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to the time that the Subcontractor provides labor at the Site, shall result in the Contractor being found in breach of the Contract and that breach shall be used in the responsibility analysis of that Contractor or the Subcontractor who was not enrolled in a program for future contracts with the State for five years after the date of the breach.

**19. OHIO WORKERS' COMPENSATION COVERAGE**

The Contractor must secure and maintain valid Ohio workers' compensation coverage until the project has been finally accepted by the Ohio Department of Transportation. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the LPA before the contract will be executed by the LPA.

The Contractor must immediately notify the LPA, in writing, if it or any subcontractor fails or refuses to renew their workers' compensation coverage. Furthermore, the Contractor must notify the LPA, in writing, if its or any of its subcontractor's workers' compensation policies are canceled, terminated or lapse.

The failure to maintain valid workers' compensation coverage shall be considered a breach of contract which may result in the Contractor or subcontractor being removed from the project, withholding of pay estimates and/or termination of the contract.

**20. PN 038 - 10/15/2004 - UNRESOLVED FINDING FOR RECOVERY**

The Contractor affirmatively represents to the LPA that it is not subject to a finding for recovery under Ohio Revised Code §9.24, or that it has taken the appropriate remedial steps required under §9.24 or otherwise qualifies under that section. The Contractor agrees that if this representation is deemed to be false, the contract shall be void ab initio as between the parties to this contract, and any funds paid by the state hereunder shall be immediately repaid to the LPA, or an action for recovery may be immediately commenced by the LPA and/or for recovery of said funds.

**21. PN 039 - 10/15/2004 - ASSIGNMENT OF ANTITRUST CLAIMS IN STATE CONTRACT LANGUAGE**

The Contractor should recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by ODOT and/or the LPA. As consideration for the Award of the Contract and intent to be legally bound, the Contractor acting herein by and through the person signing this contract on behalf of the Contractor as a duly authorized agent, hereby assigns, sells, conveys, and transfers to ODOT and/or the LPA any and all right, title and interest to any and all claims and causes of action the Contractor now has or hereafter requires under state or federal antitrust laws provided that the claims or causes of action related to the goods or services that are the subject to the contract. In addition, the Contractor warrants and represents that it will require any and all of its subcontractors and first tier suppliers to assign any and all federal and state antitrust claims and causes of action to ODOT and/or the LPA. The provisions of this article shall become effective at the time the LPA executes this contract without further acknowledgment by any of the parties.

All contracting entities shall assign their rights and responsibilities to ODOT and/or the LPA for all antitrust claims and causes of action regarding subcontractors.

**22. PN 024 – 04/21/2006 – US ARMY CORPS OF ENGINEERS AND OHIO ENVIRONMENTAL PROTECTION AGENCY PERMITS**

The above referenced permits are incorporated and made a part of this contract as special provisions incorporated herein. Therefore, in the event that the Contractor or its agents refuse or fail to adhere to the requirements of the US Army Corps of Engineers 404 Permit, and/or the Ohio Environmental Protection Agency's 401 Water Quality Certification and an assessment or fine, is made or levied against the Ohio Department of Transportation, the Contractor shall reimburse the Department within thirty (30) calendar days of the notice of assessment or fine or the Department may withhold the amount of the fine from the Contractor's next pay estimate. All money collected or withheld from the Contractor shall be delivered to the permitting agencies issuing the assessment or fine.

These fines are not to be construed as a penalty but are liquidated damages to recover costs assessed against the Department due to the Contractor's refusal or failure to comply with the permits.

**23. PN 007 – 07/19/2019 - DBE TRUCKING**

The Code of Federal Regulations Title 49, Section 26.55(d)(4)(5)(6) governs trucking operations.

The DBE trucking firm must be able to quote and negotiate its own prices. The DBE trucking firm must also provide a quote for each project that the firm is to be utilized toward the project DBE goal.

The DBE will be responsible for the management and supervision of their trucking operation on each contract. A DBE is not performing a CUF if the contract exists for the purpose of creating the appearance of DBE participation.

The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates using drivers it employs (not 1099/independent contractors).

The Disadvantaged Business Enterprise (DBE) may lease trucks on a long-term basis (a year or more), and receive full DBE credit as long as employees of the DBE operate the truck.

A lease must indicate that the DBE has exclusive use of and control over the truck, including responsibility of maintenance and insurance. This does not preclude the leased truck from working for others during the term of the lease with the DBEs consent, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the DBEs name and identification number as well.

The DBE must carry a copy of the lease agreement in the leased truck when working onsite.

Credit for expenditures with DBEs for materials or supplies toward the DBE goal is described as follows:

1. A DBE firm may be a regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.
2. When the materials or supplies are obtained from a DBE MSV (Materials and Supplies Vendor) manufacturer the prime contractor may receive credit for 100 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
3. When the materials or supplies are purchased from a DBE MSV regular dealer or supplier the prime contractor may receive credit for up to 60 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a regular dealer or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

In the past, 60% of the cost of materials and supplies purchased from a DBE MSV (100% from a DBE MSV manufacturer) would usually be counted toward DBE goals. **Effective September 1, 2018:**

o Prime contractors must obtain information about the method of procurement for each item to be procured from a DBE MSV. The DBE Affirmation Form has been modified to accommodate this information.

o To be eligible to receive **100% credit** toward DBE goals for a materials and supplies subcontract:

- The DBE MSV must be certified with the correct (**manufacturer**) NAICS code for the item
- The DBE MSV must be certified with the correct descriptor for the item
- The role the DBE MSV will play on the specific procurement in question must be consistent with the **manufacture** of the item, as indicated by the information provided by the DBE MSV

- o To be eligible to receive **60% credit** toward DBE goals for a materials and supplies subcontract:
  - The DBE MSV must be certified with the correct (**wholesale** or **retail**) NAICS code for the item
  - The DBE MSV must be certified with the correct descriptor for the item
  - The role the DBE MSV will play on the specific procurement in question must be consistent with the **regular sale or lease** of the item, as indicated by the information provided by the DBE MSV
  - **The item must not be drop-shipped**
- o The above scenario applies to both bulk items (petroleum products, steel, cement, gravel, stone, asphalt, and others that ODOT may consider to be bulk items) and non-bulk items. For bulk items, there is an additional scenario whereby a contract with a DBE MSV could receive 60% credit. To be eligible to receive **60% credit** toward DBE goals for a bulk item materials and supplies subcontract:
  - The DBE MSV must be certified with the correct (**wholesale** or **retail and trucking**) NAICS codes for the item
  - The DBE MSV must be certified with the correct descriptor for the item
  - The role the DBE MSV will play on the specific procurement in question must be consistent with the **regular sale or lease** of the item, as indicated by the information provided by the DBE MSV
  - The DBE MSV must deliver the bulk item from a non-DBE vendor to the prime contractor using distribution equipment that it both owns (or for which it has a long-term (1 year or more) lease) and operates with its regular (not ad hoc) employees.
- o If not eligible for 100% or 60% credit, an item may still be eligible for credit toward DBE goals, but only for the **fee or commission the DBE MSV receives for its services**, and only if the following additional criteria are met:
  - The DBE MSV must be certified with NAICS code 425120 Wholesale Trade Agents and Brokers
  - The DBE MSV must convincingly explain how the prime contractor benefits by transacting business with it rather than directly with the non-DBE vendor from which the DBE MSV is re-selling.
  - The usual good faith efforts process applies.
  - All credit toward DBE goals is conditional. Actual credit will be determined based upon invoices, receipts, and/or transportation documents/bills of lading, which must be submitted to ODOT as they are received throughout the course of the project.

**DBE MSV DIRECTORY** - <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx> (select MSV only)

**DBE AFFIRMATION FORM** - The new DBE Affirmation Form is now available at <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/Resources.aspx>.

## 24. PN 013 – 03/15/2019 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION PLAN AND GOOD FAITH EFFORTS

*Please see optional Appendix A - "Checklist for Bidders – Federally Funded Projects with a DBE Goal", to ensure compliance with the requirements outlined in PN 013.*

DBE UTILIZATION PLAN

All Bidders shall submit a DBE Utilization Plan at the time of bid setting forth specific information demonstrating how the Bidder will achieve the DBE goal. By submitting a DBE Utilization Plan, the Bidder is affirming that they will be using the DBE firms identified in the Utilization Plan to meet the DBE contract goal. The DBE Utilization Plan shall be submitted with Formstack at time of bid submission. Any bids received without electronic submission of the DBE Utilization Plan at or before bid time, will be deemed unresponsive. **Bidders shall submit their DBE Utilization Plans via: [https://odot.formstack.com/forms/dbe\\_copy](https://odot.formstack.com/forms/dbe_copy).** This file contains the current list of certified DBEs and is updated regularly. The DBE Utilization Plan must be filled out completely and submitted prior to bid opening.

The DBE Utilization Plan shall include the following information:

- 1) The names and addresses of the certified DBE firm(s) that will be used to meet the DBE goal;
- 2) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
- 3) Whether the DBE firm(s) being used to meet the goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity; and
- 4) The dollar amount of the participation of each DBE firm used to meet the DBE goal.

#### PROJECTS AWARDED ON ALTERNATES

In the event the project is awarded on alternates which increases or decreases the total dollar amount of the bid, a revision to the DBE Utilization Plan and DBE Affirmation Form(s) shall be submitted and approved by the Office of Small & Disadvantaged Business Enterprise within five (5) calendar days after the notification of the alternates.

#### DBE AFFIRMATION

The Apparent Low Bidder shall ensure the DBE firms being utilized to meet the DBE goal affirm their participation in the bid within five (5) calendar days after the bid opening to ODOT. The contract dollar amount(s) and/or DBE firm(s) included in the Apparent Low Bidder's DBE Utilization Plan must match the contract dollar amount(s) and/or DBE firm(s) included on the DBE Affirmation Form(s). If the contract dollar amount(s) and/or DBE firm(s) do not match, the Apparent Low Bidder shall utilize the Request to Terminate/Substitute DBE Form located at

<http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx> and submit for review and approval by the Office of Small & Disadvantaged Business Enterprise within five (5) calendar days of the bid opening.

The Apparent Low Bidder shall utilize the DBE Affirmation Form located at

<http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. The DBE Affirmation Form will be utilized as written confirmation from each listed DBE firm that it is participating in the contract in the type and amount of work provided in the Bidder's DBE Utilization Plan. The Apparent Low Bidder shall submit a separate DBE Affirmation Form for each DBE it is utilizing for the DBE goal and their Good Faith Efforts package if they were not able to attain the DBE Goal via DBE participation.

All other Bidders shall submit a DBE Affirmation Form(s) if notified that the information is required in order for ODOT to complete its assessment. Bidders shall have five (5) calendar days from the date of notification to submit all required DBE Affirmation Forms to ODOT. Notification will be by email.

In the event a DBE firm fails to confirm the information contained in the DBE Affirmation Form within five (5) calendar days of bid opening, the Apparent Low Bidder shall submit a Request to Terminate/Substitute DBE

Form, as set forth herein. The Request to Terminate/Substitute DBE Form shall be submitted within five (5) calendar days after bid opening in order for the Apparent Low Bidder to still be considered for contract award. The Apparent Low Bidder shall include as its reason for termination the DBE firm's failure to provide a timely affirmation and should include all efforts the Apparent Low Bidder made to obtain the affirmation from the DBE firm and shall attach proof of these efforts, if available. If the Apparent Low Bidder intends to replace the DBE Firm, it shall include the replacement firm's information on the form. In the event the Apparent Low Bidder is unable to affirm a DBE firm included in its original DBE Utilization Plan at bid submission and it results in a goal shortfall, Good Faith Efforts (GFE's) must be submitted by the fifth calendar day after bid opening. All GFE documentation submitted for consideration should demonstrate the efforts the Bidder made prior to the time of bid submission to secure sufficient DBE participation on the project to meet the DBE goal although the Bidder was unable to do so. A DBE firm's failure to timely confirm information contained in the DBE Affirmation Form will be considered as good cause to terminate the DBE firm and will also be considered a part of the Apparent Low Bidder's Good Faith Efforts in meeting the goal.

## DBE BIDDERS

In the event that the Bidder is also a certified DBE firm, the Bidder is required to complete a DBE Utilization Plan as set forth above. In this instance, however, the certified DBE Bidder would not need to submit a DBE Affirmation Form for the work it is planning to self-perform in order to meet the goal. ODOT will consider the submission of the bid as the certified DBE Bidder's written confirmation that it is participating in the contract. However, a DBE Affirmation Form must be submitted for all other DBE firms that are being utilized toward the DBE goal.

## JOINT VENTURES

In the event that the Bidder is a Joint Venture, the Joint Venture will only be considered a Certified DBE firm if the Joint Venture itself has been certified. The Joint Venture may, however, utilize a Certified DBE firm that is also a partner in the Joint Venture as part of its DBE Utilization Plan. The Certified DBE Firm/Joint Venture Partner, however, does not need to submit a DBE Affirmation Form for any work that the Certified DBE Firm/Joint Venture Partner is going to perform to meet the goal. ODOT will consider submission of the Joint Venture's bid as the Certified DBE Firm/Joint Venture Partner's confirmation that it is participating in the contract.

## GOOD FAITH EFFORTS (GFE's)

In the event that the DBE contract goal established by ODOT is not met, the Apparent Low Bidder shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

If the Apparent Low Bidder does not meet the goal at bid time, the Apparent Low Bidder shall submit its Good Faith Efforts (GFE's) documentation within five (5) calendar days of the bid opening. Submission of DBE affirmation(s) with additional participation sufficient to meet the DBE contract goal does not cure the Apparent Low Bidder's failure to meet the goal at bid time or eliminate the Apparent Low Bidder's responsibility of submitting GFE's within five (5) calendar days of the bid opening.

The Apparent Low Bidder shall demonstrate its GFE's by submitting the following information within five (5) calendar days after the bid opening:

- (1) All written quotes received from certified DBE firms;
- (2) All written (including email) communications between the Apparent Low Bidder and DBE firms;
- (3) All written solicitations to DBE firms, even if unsuccessful;
- (4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
- (5) Phone logs of communications with DBE firms.

The Apparent Low Bidder shall utilize the Pre-Bid GFE Template to document their GFE's. This template and supporting documentation shall be sent along with any DBE Affirmation Forms within five (5) calendar days of



bid opening. ODOT has provided Good Faith Efforts Guidance located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>.

All other Bidders shall submit documentation of GFE's if notified that the information is required in order for ODOT to complete its bid assessment. Bidders shall have five (5) calendar days from the date of notification to submit all required GFE documentation. Notification will be by phone or email.

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Bidder has made adequate good faith efforts to meet the goal.

#### ADMINISTRATIVE RECONSIDERATION

ODOT will review the GFE documentation and issue a written determination on whether adequate GFE's have been demonstrated prior to contract award. If ODOT determines that the Apparent Low Bidder has failed to demonstrate adequate GFE's to meet the goal, the Apparent Low Bidder will have an opportunity for administrative reconsideration prior to the contract being awarded.

As part of this reconsideration, the Apparent Low Bidder may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. Such written documentation or argument must be provided to ODOT, attention to the Office of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223 (with copy to the Office of Contract Sales, MS 4110), within two (2) business days of ODOT's written determination that GFE's were not adequately demonstrated. The Apparent Low Bidder may also include in their written documentation a request for an in-person meeting to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT's Office of Chief Legal Counsel will respond to the Apparent Low Bidder within five (5) business days of receiving written documentation or holding the in-person meeting.

ODOT will send the Apparent Low Bidder a written decision on reconsideration explaining the basis for finding that the Apparent Low Bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

#### TERMINATION OR REPLACEMENT OF A DBE

By submitting a DBE Utilization Plan, the Bidder is committing to use the DBE firms identified in the plan. The Apparent Low Bidder/Awarded Contractor shall utilize the specific DBEs listed in the DBE Utilization Plan to perform the work and supply the materials for which each is listed unless the Apparent Low Bidder/Awarded Contractor obtains written consent as provided in this paragraph. In order to request termination or substitution of a DBE firm, the Apparent Low Bidder/Awarded Contractor shall utilize the Request to Terminate/Substitute DBE Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>

This termination/replacement procedure applies only to DBE firms or the amount of work being utilized to meet the goal.

Without ODOT's written consent to terminate/replace a DBE firm being utilized to meet the goal, the Awarded Contractor shall not be entitled to any payment for DBE listed work or material unless it is performed or supplied by the listed DBE.

#### GOOD CAUSE

ODOT may provide written consent to terminate a DBE only if it agrees, for reasons stated in a concurrence document, that the Apparent Low Bidder/Awarded Contractor has good cause to terminate the DBE firm.

For purposes of this paragraph, good cause to terminate a DBE includes the following circumstances:

- 1) The listed DBE firm fails or refuses to provide the required DBE Affirmation Form or to execute a written contract;
- 2) The listed DBE firm fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE firm to perform its work on the subcontract results from the bad faith or discriminatory action of the awarded contractor;
- 3) The listed DBE firm fails or refuses to meet the awarded contractor's reasonable, nondiscriminatory bond requirements.
- 4) The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness;
- 5) The listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
- 6) ODOT has determined that the listed DBE firm is not a responsible contractor;
- 7) The listed DBE firm voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- 8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- 9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- 10) Other documented good cause that ODOT determines compels the termination of the DBE firm. Provided, that good cause does not exist if the awarded contractor seeks to terminate a DBE it relied upon to obtain the contract so that the awarded contractor can self-perform the work for which the DBE contractor was engaged or so that the awarded contractor can substitute another DBE or non-DBE contractor after contract award.

#### REPLACEMENT

When a DBE firm is terminated or fails to complete its work on the contract for any reason the Awarded Contractor must make GFEs to find another DBE firm to replace the original DBE. These GFEs shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The GFEs shall be documented by the Awarded Contractor. If ODOT requests documentation under this provision, the Awarded Contractor shall submit the documentation within seven (7) calendar days, which may be extended for an additional seven (7) calendar days if necessary at the request of the contractor, and ODOT shall provide a written determination to the contractor stating whether or not GFEs have been demonstrated.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions and substitutions of DBE firms put forward by Bidders in the DBE Utilization Plan.

#### ADDITION

In the event additional DBE participation is required for the project, the Awarded Contractor shall utilize the DBE Affirmation Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. The DBE Affirmation Form will be utilized as written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work on the project.

#### WRITTEN NOTICE TO DBE

Before transmitting to ODOT its request to terminate and/or substitute a DBE firm, the Apparent Low Bidder/Awarded Contractor must give notice in writing to the DBE firm, with a copy to ODOT, of its intent to request to terminate and/or substitute, and the reason(s) for the request.

The Apparent Low Bidder/Awarded Contractor must give the DBE five (5) calendar days to respond to the notice, advising ODOT and the Apparent Low Bidder/Awarded Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the Apparent Low Bidder/Awarded Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), ODOT may provide a response period shorter than five (5) days.

#### GOAL ATTAINMENT POST AWARD

The Awarded Contractor shall make available upon request a copy of all DBE subcontracts. The Awarded Contractor shall ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower tier subcontractors be performed in accordance with this Proposal Note.

Approval of a DBE Utilization Plan does not ensure approval of C-92 Requests to Sublet nor does approval of a DBE Utilization Plan indicate that the DBE goal has been met. ODOT will monitor goal attainment throughout the life of the project. It is the responsibility of the Awarded Contractor to advise ODOT of any changes to the DBE Utilization plan throughout the life of the project. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly.

#### SANCTIONS AND ADMINISTRATIVE REMEDIES

##### PRE-BID

Failure by the Apparent Low Bidder to do any of the following shall result in the bid being rejected in accordance with ORC §5525.08:

- 1) Failure to submit a complete DBE Utilization Plan at the time of bid;
- 2) Failure to submit DBE Affirmation Form(s) and/or failure to submit Request to Terminate/Substitute DBE Form(s) as required by this Proposal Note; and  
Failure to meet the goal and/or failure to demonstrate GFEs to meet the goal as required by this Proposal Note.

##### POST-BID

Failure by the Awarded Contractor to carry out the requirements of this Proposal Note, including the submission of adequate good faith efforts to meet the goal for a project, is a material breach of the contract and may result in the issuance of sanctions as follows:

1st Tier:	Letter of Reprimand
2nd Tier:	Damages equivalent to the DBE shortfall
3rd Tier:	If a pattern of paying damages persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the magnitude and the type of offense
- the degree of the Contractor's culpability
- any steps taken to rectify

- the Contractor's record of performance on other projects including, but not limited to:
  - annual DBE participation
  - annual DBE participation on projects without goals
  - the number of complaints ODOT has received regarding the Contractor
  - the number of times the Contractor has been previously sanctioned by ODOT

**25. PN - 031 – 9/1/2020 – Local-let Construction Projects  
(Required if DBE goal on the project)**

The U.S. Department of Transportation's (DOT's) rules related to Disadvantaged Business Enterprises are published in the Code of Federal Regulations (CFR), 49 CFR Part 26. Within 49 CFR Part 26, 49 CFR 26.29 lays out the prompt payment requirements that apply to ODOT (the Department), its subrecipients (LPA's), and, by extension, both Prime Contractors and Subcontractors (including non-DBEs). The 49 CFR 26.29 requirements apply only to federally funded contracts (i.e., contracts with DOT financial assistance). The Prime Contractor must comply with this Proposal Note and the Department's prompt payment requirements as published in 107.21 of the Construction and Materials Specifications (C&MS).

The Department will monitor payments made by Prime Contractors and Subcontractors for compliance with this Proposal Note, C&MS 107.21 and, where applicable, 49 CFR 26.29. To facilitate this monitoring, the Department requires prime contractors to report their payments to all subcontractors with the submission of each invoice. The payment data reported must include any retainage withheld and any previously withheld retainage released. All such reporting must take place through a web-based submission on GoForms. Invoices will not be approved and processed for payment unless this reporting form has been submitted and received by the Department.

The Prime Contractor must report the following information:

- 1.) The name of the payee;
- 2.) The dollar amount of the payment to the payee;
- 3.) The date the payee was paid;
- 4.) The amount of retainage withheld (if any).

The Prime Contractor must sign each reported payment and submit to ODOT via the GoForms website.

If the Prime Contractor fails to submit the aforementioned documentation with each invoice, they will be determined to be non-compliant and invoices will not be processed for payment.

Payees must verify each payment reported by the payer within 30 days of the payment being signed by the payer. This verification must include:

- 1.) Whether the payment was received, and if so, whether it was as expected or not;
- 2.) The dollar amount of the payment received;
- 3.) The date the payment was received.

## **SANCTIONS AND ADMINISTRATIVE REMEDIES**

Failure by the prime contractor to follow Prompt Payment requirements may result in the issuance of sanctions as follows:

1st Tier: Letter of Reprimand

2nd Tier: Damages equivalent to the daily liquidated damages amount found in section 108.07 for each incident of non-compliance

3rd Tier: If a pattern of paying damages persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the magnitude and the type of offense;
- the degree of the Contractor's culpability;
- any steps taken to rectify;
- the Contractor's record of performance on other projects; and
- the number of times the Contractor has been previously sanctioned by ODOT.

**26. WAIVER OF CM&S 614.03**

ODOT's 2016 Construction and Material Specifications section 614.03, third paragraph, does not apply to any project which is not physically located on the National Highway System (NHS), and/or does not impact NHS traffic in any way.

**27. ODOT AS OBLIGEE ON BOND**

The contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of the estimate as security for the faithful performance of its contract. In addition to the project Owner, ODOT shall be named as an obligee.

**28. NON-DISCRIMINATION PROVISIONS**

1) **Compliance with Regulations:** The CONTRACTOR will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the CONTRACTOR will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

(2) **Nondiscrimination:** The CONTRACTOR, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(3) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential subcontractor, or supplier will be notified by the CONTRACTOR of the CONTRACTOR's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

(4) **Information and Reports:** The CONTRACTOR will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books,

records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration (hereinafter "FHWA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this contract, the LPA will impose such contract sanctions as it or STATE / FHWA may determine to be appropriate, including, but not limited to:

- (a) Withholding of payments to the CONTRACTOR under the contract until the CONTRACTOR complies, and/or
- (b) Cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The CONTRACTOR will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor procurement as the LPA or STATE / FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor, or supplier as a result of such direction, the CONTRACTOR may request the LPA / STATE to enter into such litigation to protect the interests of the LPA and the STATE, and, in addition, the LPA / STATE may request the United States to enter into such litigation to protect the interests of the United States.

## 29. **PN 095 – 03/30/2020 Potential Impacts and Delays Due to COVID-19**

In an effort to anticipate the potential impacts to the Project caused by the COVID-19 threat and in following direction from the Governor and other authorities, the Contractor is on notice of the need to comply with all federal, state and local orders generated to prevent the spread of contagious or infectious diseases, including the Stay at Home Order from the Ohio Director of Health dated March 22, 2020, and subsequent orders, located through the following website:

<https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/public-health-orders/directors-order-to-stay-at-home>

Contractor is on notice that the Project is considered essential and that the contractor and his employees, subcontractors and suppliers are considered essential businesses and performing essential functions as defined under the Stay at Home Order.

Notwithstanding any other provisions of the contract documents, in the event of project delay or impacts to performance due to a voluntary or mandatory COVID-19 virus Directives, Orders, quarantine or closure directed by government authorities, either party may, by providing notice to the other party as required under CMS 108.02(F), extend the Completion Date for a period of up to thirty (30) days. Extensions under this paragraph shall be considered an excusable, non-compensable delay in accordance with CMS 108.06(B). If any portion of the Work is still not able to be performed upon the expiration of the extension, either party may provide notice to the other party requesting a termination for convenience under 108.09. The termination for convenience remains at the sole discretion of the LPA's Person in Responsible Charge in conjunction with the Office of Local Programs.

The Contractor and LPA will exercise best efforts to utilize remote services to perform Work that otherwise cannot be performed in person due to a voluntary or mandatory COVID19 virus quarantine, closure, or impact as directed by Stay at Home Order.

Impacts to the Project generated by the Stay at Home Order shall not be considered an “issue” under 108.02 (F) for Projects sold after the date of this Note. Contractors are on notice that their bids should include any impacts they foresee or should have reasonably foreseen due to the Stay at Home Order or existing or reasonably foreseeable orders by any other federal, state or local official.

If any emergency order or declaration of any government official is lifted at any time, the LPA will provide written notice to the Contractor that this Note shall be considered void thirty (30) days after receipt of the written notice. If the Stay at Home Order from the Ohio Director of Health dated March 22, 2020 is lifted at any time, this Note shall be considered null and void thirty (30) days after the lifting of those orders.

### 30. **PN 015 – 04/17/2020 - CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS**

The required contract provisions for federal-aid construction contracts (contained in Form FHWA 1273 revised May 2012 and located here) are hereby incorporated by reference as if rewritten herein. Form FHWA-1273 shall be physically incorporated in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreement for supplies or services related to a construction contract). The prime contractor shall be responsible for ensuring that the FHWA-1273 is physically incorporated into all lower-tier subcontracts.

#### **SANCTIONS AND ADMINISTRATIVE REMEDIES**

Failure by the prime contractor to include the provisions of FHWA-1273 in their contract or in their lower-tier subcontracts may result in the issuance of sanctions as follows:

1st Tier: Letter of Reprimand

2nd Tier: Damages equivalent to the daily liquidated damages amount found in section 108.07 for each incident of non-compliance

3rd Tier: If a pattern of paying damages persists or the Contractor has falsified, misrepresented or withheld information, the LPA can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the magnitude and the type of offense;
- the degree of the Contractor’s culpability;
- any steps taken to rectify;
- the Contractor’s record of performance on other projects; and
- the number of times the Contractor has been previously sanctioned by the LPA.

### 31. **REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS (Electronic Form FHWA 1273 – May 1, 2012)**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act

- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

#### **ATTACHMENTS**

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

## I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794),

Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.



**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to

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increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

## 10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

## III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms,

washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

#### **IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

##### **1. Minimum wages**

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the

wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all

payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

### 4. Apprentices and trainees

#### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

#### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

#### d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and

trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) The prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) The prime contractor remains responsible for the quality of the work of the leased employees;

(3) The prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) The prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

## IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### 1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall

disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.



i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## 2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## 2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an

erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not

less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not

normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

## **Appendix A**

### **Checklist for Bidders- Federally Funded Projects with a DBE Goal**

- ☐ Quotes have been obtained by DBE firms for participation on the project
- ☐ NAICS codes have been verified on the Ohio Unified DBE Directory that the DBE firms to be utilized can be applied toward the project goal for the specific work wanted:  
<http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>
- ☐ DBE Utilization Plan has been completed & submitted electronically prior to bid opening via: [https://odot.formstack.com/forms/dbe\\_copy](https://odot.formstack.com/forms/dbe_copy) (This applies to all Bidders including DBE Firms)
- ☐ The Utilization Plan submitted as described above, meets or exceeds the DBE Goal established for the project
- ☐ If the DBE Goal has not been met that Good Faith Efforts have been submitted prior to bid to opening to: [Dot.contractslettingmgr@dot.ohio.gov](mailto:Dot.contractslettingmgr@dot.ohio.gov)
- ☐ The affirmation form that is required 5 calendar days after bid opening has been downloaded ready to send out to all DBE firms listed on the Utilization Plan:  
<http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>.

