

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

**CLOVER VALLEY ROAD RESURFACING PROJECT
(FOUNDATION ROAD TO KNOX COUNTY LINE)**

**Owner:
HARTFORD TOWNSHIP
2 NORTH HIGH STREET
HARTFORD, OH 43013**

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NOTICE TO CONTRACTORS

Sealed proposals for the Clover Valley Road Resurfacing Project (the “Project”) in Hartford Township, Ohio (the “Township” or “Owner”) will be received by the Hartford Township Board of Trustees, Licking County, Ohio, c/o Adam Lanthorn, Fiscal Officer, at the Township Offices, 2 North High Street, Hartford, Ohio 43013, until July 15, 2024, at **5:00PM**.

On July 15, 2024, at **6:30PM**, bids will be opened at a Special Meeting of the Hartford Township Trustees at the Hartford Township Maintenance Building located at 26 Smith Street, Croton, OH 43013.

Plans, specifications, contract documents and bid forms may be secured by contacting Fiscal Officer Adam Lanthorn at (614) 204-2082; fiscaloffice@hartfordtwp.net.

A brief description of the required work is as follows:

1. Resurfacing with 1.5” item 441 Asphalt Concrete Surface Course, Type 1, (448), PQ 44-22. Include item 617 Compacted Aggregate Should 1’ wide by 1.5’ depth. .

Bidders who submit a bid must have the authority to do so by the Issuing Office. Bids from Bidders who are not authorized by the Issuing Office to place a bid may be returned as being non-responsive. The Township reserves the right to waive informalities and to reject any and all bids, waive any technical requirements, and to accept any bid which is deemed by the Board of Trustees to be the lowest responsible bid.

Adam Lanthorn, Fiscal Officer
Hartford Township

To be advertised:

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INSTRUCTIONS TO BIDDERS

1. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- A. Bidders are cautioned to review carefully the Site and all parts of the Contract Documents made available to each bidder, including, but not limited to, the Notice to Bidders, Instructions to Bidders, Bid Form, Owner-Contractor Agreement, Special Conditions for the Project (if any), Drawings, and Specifications. The Contract Documents, as defined in the Owner-Contractor Agreement, shall govern the relationship between the successful Bidder and the Owner upon execution of an Owner-Contractor Agreement by the Owner and the successful Bidder.
- B. No allowance will be made subsequently for any omission, error, or negligence of the Bidder.
- C. All Bidders shall be familiar with the existing conditions in the material and labor markets, as well as the conditions related to the Work, and the fact that a Bid is submitted will be construed by the Owner as an agreement by the Bidder to carry out the improvements in full conformance with the Specifications and other Contract Documents, notwithstanding the existing conditions.
- D. Each Bidder shall be responsible for coordinating its Work with the Work of other bid packages that require integration of the Bidder's Work.
- E. Attention of the Bidder is particularly called to those parts of the Owner-Contractor Agreement and other Contract Documents and Specifications, which deal with the following:
 - 1) Insurance Requirements
 - 2) Prevailing Wage Standards
 - 3) Requirement for a bid guaranty or bid bond and performance bond for 100% of the contract price in the manner and form prescribed by R.C. 153.54 et. seq.
 - 4) Requirement that all subcontractors be approved by the owner
 - 5) Time for completion and liquidated damages requirements
 - 6) Safety standards
 - 7) Contractor's responsibility to obtain permits
- F. At the time of the opening of the bids each bidder will be presumed to have inspected the site and to have read and be thoroughly familiar with the plans and contract documents including all addenda. The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect to his/her bid.

2. OWNER

Hartford Township
2 North High Street
Hartford, Ohio 43013

Project Contact: Fiscal Officer Adam Lanthorn
Phone: (614) 204-2082; fiscalofficer@hartfordtwp.net

3. PROJECT

The Project consists of all labor, materials, and services necessary for the timely and proper completion of the **Clover Valley Road Resurfacing Project** all in accordance with the Contract Documents.

4. WORK

Resurfacing of Clover Valley Road, from Foundation Road to the Knox County Line. See Engineer's estimate for [details\[AM3\]](#).

Specific scopes, road lengths, and road widths are identified on the Engineer's Bid Forms. The Owner and the Contract require that resurfacing work shall provide complete coverage of all existing road [widths\[AM4\]](#).

5. CONTRACT DOCUMENTS

The Contract Documents for the Project may be examined at the following locations: The Township Offices, 2 North High Street, Hartford, Ohio 43031

Complete sets of bidding documents may be secured from Fiscal Officer Adam Lanthorn, (614) 204-2082; fiscalofficerhartfordtwp.net.

Bidders may obtain bidding documents upon payment of \$_____ per set (non-refundable) in the form of cash[AM5] or a commercial bank check payable to St. Albans Township. Bid documents may also be obtained by mail upon receipt of \$_____ plus \$_____ shipping fees at the above office.

Bidders shall use complete sets of Contract Documents in preparing bids. Neither the Owner nor the Licking County Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

The Owner, in making the Contract Documents available on the above terms, does so only for the purpose of obtaining bids on the Work and does not confer a license or grant for any other use.

6. PRE-BID MEETING[AM6]

ATTENDANCE AT THE PRE-BID MEETING IS REQUESTED[AM7].

7. PREPARATION OF BIDS

- a. All Bids must be submitted on the "Bid Form" furnished with the Contract Documents.
- b. All blank spaces 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 Form 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.
- c. Bidders shall note receipt of Addenda on the Bid Form. If the Bidder fails to acknowledge receipt of each Addendum, the Bid shall be deemed non-responsive, unless the Bid amount reflects receipt of the Addendum or the Addendum involves only a matter of form and does not affect the price, quantity or quality of the Work to be performed.
- d. Each Bidder shall submit one (1) original copy of its Bid to the Owner. The Bid Form shall be signed with the name typed or printed below the signature. A Bid shall not be submitted by facsimile transmission. A Bidder that is a corporation shall sign its Bid with the legal name of the corporation followed by the name of the state of incorporation and the legal signature of an officer authorized to bind the corporation to a contract. In the case of a partnership, the signature of at least one of the partners must follow the firm name, using the term "member of the firm." In the case of an individual, use the term "doing business as" or "owner". The bidder shall further state the name or address of each person or corporation interested therein.
- e. Each Bid shall be enclosed in a sealed opaque envelope with the Bidder's name and the title of the Project printed in the upper left hand corner and addressed as follows: Hartford Township Trustees, c/o Adam Lanthorn, at P.O. Box 203, Croton, Ohio 43013, and shall be marked "**Sealed Bid – Clover Valley Road Resurfacing Project**". Bids must be received by 5:00PM on July 15, 2024.

f. The completed Bid Form shall be accompanied by the following documents:

- i. The Bid Guaranty (see Section 8 below);**
- ii. Non-Collusion Affidavit;**
- iii. Bidder's Equal Employment Opportunity Certification;**
- iv. ODOT Pre-qualification Certification.**

g. The Bidder shall take the following precautions in preparing its bid:

- i. Sign the Bid and check to ensure all blank spaces have been filled in with requested information and that the specified accompanying documents (listed in Item f. above) have been included in a sealed opaque envelope addressed as described in Item e. above.
- ii. When the Bid Form provides for quoting either an addition or deduction for an Alternate item, indicate whether the sum named is an addition or deduction.
- iii. When the Bid Form provides for quoting a unit price, the Bidder shall quote the unit price as set forth in the Bid Documents.
- iv. When applicable, make sure that the Bid Guaranty is properly executed and signed by:
 - a. The Bidder
 - b. The Surety or Sureties
- v. Make sure that the amount of the Bid Guaranty (if the Bid Guaranty is in the form of a certified check, letter of credit, or cashier's check) is for a specific sum in an amount as instructed in Section 8 below. If the Bid Guaranty is in the form of the Bid Guaranty and Contract Performance and Payment Bond, the amount may be left blank; if an amount is inserted, it must equal the total of the base bid and all add alternates included. Failure to state an amount equal to the total of the base bid and all add alternates shall make the bid non-responsive if the Owner selects alternates not included in the amount.
- vi. Make sure that the appropriate bid package and scope of work is inserted in the correct space on the Bid Guaranty and Contract Performance and Payment Bond Form. Failure to include work covered by the bid submitted may make the bid non-responsive.

8. BONDS AND GUARANTEES

- a. Bid Guaranty:** Bidder shall furnish a Bid Guaranty, as prescribed in Sections 153.54, 153.57, and 153.571 of the Ohio Revised Code, in the form of 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) a certified check, cashier's check, or irrevocable letter of credit in an amount equal to 10% of the bid. Bid amount shall be the total of all sums bid, including all add alternatives, but excluding all deduct alternatives. **NOTE: AIA Bid Bond forms are not acceptable.**
- b. Contract Performance and Payment Bond:** The successful Bidder who, as a Bid Guaranty, submits a certified check, cashier's check, or irrevocable letter of credit in an amount equal to 10% of the bid, shall furnish a Contract Performance and Payment Bond in the form of a Contract Performance and Payment Bond included in the Bid Documents in an amount equal to 100% of the Contract Sum. **NOTE: AIA Bond forms are not acceptable.**
- c. The bond must be issued by a surety company ("Surety") 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, 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. Other sureties may be acceptable to the Owner, in its sole discretion.

- d. All bonds shall be signed by an authorized agent of an acceptable Surety and by the Bidder.
- e. Bonds shall be supported by credentials showing the Power of Attorney of the agent, a certificate showing the legal right of the Surety to do business in the State of Ohio, and a financial statement of the Surety.
- f. The Bid Guaranty, as applicable, shall be in the name of or payable to the order of the Owner.
- g. The name and address of the Surety and the name and address of the Surety's Agent shall be typed or printed on each bond.
- h. Any check or bid bond will be returned to all except the three lowest bidders within three (3) days after the opening of bids, and the remaining cash, checks, or bid bonds will be returned promptly after the Owner and the accepted bidder have executed the contract, or, if no award has been made within thirty (30) days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as he/she has not been notified of the acceptance of his/her bid.

9. BIDDER'S EXAMINATION AND REPRESENTATION

- a. Before submitting a Bid, each Bidder should carefully examine the Contract Documents and the construction Site and inform itself of the limitations and conditions related to the Work covered by the Bid and shall include in its Bid a sum to cover the cost of such items. Bidders awarded contracts will not be given extra payments for conditions that could have been determined by examining the Site and Contract Documents.
- b. It is the purpose and intent of the Contract Documents that a complete job be accomplished. It shall be each Bidder's responsibility to include costs necessary to provide labor and materials for that portion of the Work bid upon, including incidentals, whether or not specifically called for in the Specifications and Drawings.

10. CLARIFICATION OF BIDDERS' QUESTIONS, AND REQUESTS FOR INTERPRETATION

- a. All questions and any request for an interpretation related to this Project shall be in writing addressed to Adam Lanthorn, Fiscal Officer, at P.O. Box 203, Croton, Ohio 43013, fiscalofficer@hartfordtwp.net, and to be given consideration must be received at least five (5) days prior to the bid submission deadline.
- b. No responses to questions or official interpretation of the meaning of the plans, specifications or other bid documents will be made to any bidder orally.
- c. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be made by electronic mail or certified mail with return receipt requested to all prospective bidders at the respective addresses furnished for such purposes, not later than three (3) days prior to the date fixed for bid submissions. All addenda so issued shall become part of the contract documents.
- d. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his/her bid as submitted.
- e. Each Bidder is responsible for calling to the attention of the Owner any ambiguities, inconsistencies, errors, or omissions which occur in the Contract Documents for its part of the Work. If the Bidder fails to request clarification or interpretation, the Bidder will be expected to overcome such conditions without additions to the bid amount.
- f. Bidders are instructed to request interpretations and the issuance of addenda if the Contract Documents call for materials, equipment, or methods that adversely affect the cost or quality of the Project or are unavailable.

11. METHOD OF AWARD

- a. All Bids shall remain open for acceptance for sixty (60) days following the day of the Bid opening, but the Owner may, in its sole discretion, release any Bid and return the Bid Guaranty prior to that date. The Bid Guaranty shall be subject to forfeiture, as provided in the Ohio Revised Code, if a Bid is withdrawn during the period the bids are being held.
- b. 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. 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, will 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 alternatives and unit prices, if requested, in 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 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 any such evaluation to the Owner's satisfaction. The factors to be considered by the Owner in making its determination as to whether a Bidder is a responsible bidder include the following as the Owner, in its discretion, deems appropriate; the Owner may give such weight to each factor as it deems appropriate:

- i. The Bidder's Work History. The Bidder must have a record of consistent customer satisfaction and of consistent completion of projects, including projects which 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 and competence of the Bidder.

The Owner will consider 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.

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 managers) or the employees of any of them as a result of or related to such candidate 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.

- ii. The Bidder's financial ability to complete the Contract successfully and on time, without resort to its Surety.
 - iii. The Bidder's prior experience with similar work on comparable or more complex projects;
 - iv. The Bidder's equipment and facilities;
 - v. The adequacy, in numbers and experience, of the Bidder's work force to complete the Contract successfully and on time;
 - vi. The Bidder's compliance with federal, state, and local laws, and regulations, including but not limited to the Occupational Safety and Health Act;
 - vii. The ability of the Subcontractors the Bidder intends to use on the Project to meet all criteria in this Section;
 - viii. 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 9.24; and/or,
 - ix. Depending upon the type of the Work, other essential factors, as the Owner may determine.
- d. The apparent low bidder will provide the Owner with such additional information as the Owner may request regarding the Bidder's responsibility. Additionally, upon request from the Owner, any other Bidder will provide the Owner with such additional information as the Owner may request regarding the Bidder's responsibility. A Bidder will submit any requested information within three (3) business days of the date of the request.
 - e. The failure to submit requested information on a timely basis may result in the determination that the Bidder is not responsible.
 - f. By submitting its Bid, the Bidder agrees that the Owner's determination of responsibility shall be final and conclusive, and that if the Bidder or any person challenges such determination in any legal proceeding and such challenge is not successful, the Bidder will reimburse the Owner for all legal fees and expenses incurred by the Owner that are related to such challenge, including the cost of collection.

- g.** Within three (3) business days of the Owner's receipt of the Bids or such longer time as may be permitted in writing by the Owner, the apparent low bidder will submit the following information:
 - i.** A list of all proposed Subcontractors, suppliers, and manufacturers, including the contract amount for each proposed Subcontractor, supplier, and manufacturer that will provide either labor, material or a combination of labor and material for the project; and,
 - ii.** Experience qualification statements for all proposed Subcontractors, suppliers, and manufacturers that will provide either labor, material or a combination of labor and material for the project.

After approval by the Owner of the list of proposed Subcontractors, suppliers, and manufacturers submitted by the successful Bidder, the list shall not be changed unless written approval of the change is authorized by the Owner.

- h.** Affidavit as to Property Taxes. The successful Bidder will be required to submit, prior to the time of the entry into the Contract for the Work, an affidavit in the form required by Section 5719.042, Ohio Revised Code, regarding the status of the Bidder's personal property taxes. A copy of the form of affidavit is included in the Contract Documents.
- i.** No Bidder may withdraw its Bid within sixty (60) days after the date the Bids are opened.
- j.** The Owner reserves the right to disqualify Bids, before or after opening, upon evidence of collusion with intent to defraud or other illegal practices on the part of the Bidder.

12. SUBSTITUTIONS/NON-SPECIFIED PRODUCTS

No substitutions will be considered or accepted prior to receipt of the Bids. Upon execution of the Agreement, substitutions will only be made in accordance with the provisions of the Owner-Contractor Agreement.

13. ALTERNATES

- a.** The Owner may request Bids on Alternates. If the Owner requests Bids on Alternates, the Bidder should include the cost of the Alternates requested on its Bid Form.
- b.** At the time of awarding the Contract, the Owner will select or reject Alternates as it determines is in its best interest. A Bidder's failure to include in its Bid Form the cost of an Alternate selected by the Owner and applicable to the Bidder's work may render the bid non-responsive and be grounds for the rejection of the Bid. Otherwise, the failure to include the cost of an Alternate will not be deemed material. If a Bidder fails to include a cost of an alternate in its Bid Form, the bidder's bid amount for that alternate will be \$0.00.
- c.** The Bidder acknowledges that although there is an estimate for the cost of the Project, the market conditions may and frequently do result in the estimate being different from the sum of the Bids received, either higher or lower. The Bidder understands that the Owner may include Alternates, which may include deduct Alternates as well as add Alternates, to give it the flexibility in building the Project with the funds that are available. The Bidder further understands and acknowledges that use of add and deduct Alternates is a long held customary practice in the construction industry in the State of Ohio. The Bidder also acknowledges that the Owner will not make a decision about the Alternates on which to base the award of contracts until the bids are received, and the Owner can compare its available funds with the Base Bids and the cost or savings from selecting different Alternates. The Bidder understands that the award to the lowest responsible Bidder will be based on the lowest Base Bid plus selected Alternates, and may result in an award to a Bidder other than the Bidder that submitted the lowest Base Bid.
- d.** If, during the progress of the Work, the Owner desires to reinstate any alternate not included in the contract, the Owner reserves the right to reinstate the alternate at the price bid by the contractor provided that such action is taken in sufficient time so as not to delay the progress of the work or cause the contractor additional expense.

14. UNIT PRICES

Where unit prices are requested in the Bid Form for a Prime Contract on which the Bidder submits a Bid, the Bidder shall quote a unit price. Unless otherwise expressly provided in the Contract Documents, such unit prices shall include all labor, materials and services necessary for the timely and proper installation of the item for which the unit prices are requested. The unit prices quoted in the Bid shall be the basis for any Change Orders entered into under the Owner-Contractor Agreement, unless the Owner determines that the use of such unit prices will cause substantial inequity.

15. ADDENDA

- a. The Owner reserves the right to issue Addenda changing, altering, or supplementing Contract Documents prior to the time set for receiving bids. The Owner will issue the Addenda to clarify Bidders' questions, to change, alter, or supplement the Contract Documents.
- b. Any explanation, interpretation, correction or modification of the Contract Documents will be issued in writing in the form of an Addendum, which shall be the only means considered binding. Explanations or interpretations made by any other means shall **NOT** be legally binding. All Addenda shall become a part of the Contract Documents.
- c. Bidders must submit questions to the Owner in sufficient time in advance of the Bid opening to allow the Owner to respond. All Addenda will be issued, except as hereinafter provided, and mailed or otherwise issued to persons who have obtained Contract Documents for the Project, at least **seventy-two (72)** hours prior to the published time for the opening of bids, excluding Saturdays, Sundays and legal holidays. If any Addendum is issued within such **seventy-two (72)** hour period, then the time for opening of Bids shall be extended one (1) week with no further advertising of bids required.
- d. Copies of each Addendum will be sent only to the Contractors to whom Contract Documents have been issued. Receipt of Addenda shall be indicated by Bidders in the space provided on the Bid Form. Bidders are responsible for acquiring issued Addenda in time to incorporate them into their Bid. Bidders should contact the Owner prior to the Bid opening to verify the number of Addenda issued.
- e. If a Bidder fails to indicate receipt of all Addenda issued by the Owner on its Bid Form, the Bid of such Bidder will be deemed to be responsive only if:
 - i. The Bid received clearly indicates that the Bidder received the Addendum, such as where the Addendum added another item to be bid upon and the Bidder submitted a bid on that item; or,
 - ii. The Addendum involves only a matter of form or is one that has either no effect or merely a trivial or negligible effect on price, quantity, quality, or delivery of the item bid upon.

16. INTERPRETATION

- a. If a Contractor contemplating submitting a Bid for the proposed project is in doubt as to the true meaning of any part of the Specifications or Contract Documents, it may submit a written request for an interpretation thereof to the Owner in accordance with Section 10 of these Instructions to Bidders. Any interpretation of the Contract Documents will be made by Addendum only, duly signed, and a copy of such Addendum will be mailed or delivered to each person receiving a set of Contract Documents. The Owner will not be responsible for any other explanation or interpretation of the proposed documents.
- b. In interpreting the Contract Documents, words describing materials that have a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with the well-known meaning recognized by the trade.
- c. Bidders are responsible for notifying the Owner in a timely manner of any ambiguities, inconsistencies, errors or omissions in the Contract Documents. The Bidder shall not, at any time after the execution of the Contract, be compensated for a claim alleging insufficient data, incomplete Contract Documents, or incorrectly assumed conditions regarding the nature or character of the Work, if no request for interpretation was made by the Bidder prior to the bid opening.

17. TAX STATUS

The Owner is a political subdivision of the State of Ohio 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, executed by the successful Bidder and the Owner, to the vendors or suppliers when the materials are acquired. The Owner will execute properly completed certificates on request.

18. DATE FOR COMPLETION/LIQUIDATED DAMAGES

- a. Milestone Completion. To the extent the Contract Documents include Milestone Completion Dates, each successful Bidder shall have its required Work completed by the respective Milestone Completion Date(s) (if any) set forth in the Contract Documents. The work required to be completed by the Milestone Completion Date(s) is defined in the Contract Documents. By submitting a Bid for the Work, the Bidder agrees that the periods for performing the Work are reasonable, and that the Bidder can complete the required Work by the applicable Milestone Completion Date(s).

If the successful Bidder does not have its Work on the Project completed by the Milestone Completion Date(s) (if any) for its portion of the Work as established in the Contract Documents, the Owner shall be entitled to retain or recover from the successful Bidder, as Liquidated Damages, and not as a penalty in compliance with Ohio Revised Code Section 153.19, the amounts set forth in the Contract Documents for each and every calendar day beyond the Milestone Completion Date(s) as extended in accordance with the Contract Documents. The Owner's right to recover Liquidated Damages shall not substitute for any right of recovery for additional costs incurred should the successful Bidder fail to complete the Contract according to the Contract Documents. Liquidated Damages are necessary in that it is impossible to precisely calculate the monetary loss to the Owner as the result of any delay in implementation

- b. Substantial Completion.** Each successful Bidder shall have its work substantially completed by the respective Date for Substantial Completion set forth in the Contract Documents. The Project Time Schedule will be finalized after award of the contracts for the Work, as described in the Contract Documents, and is subject to review and acceptance by the Owner. The term Substantial Completion is defined in the Contract Documents. For purposes of the Contract Documents applicable to the Contractor, the term Substantial Completion shall refer to the date of completion for the Contractor's portion of the Work as established in the Project Time Schedule. By submitting a Bid for the Work, the Bidder agrees that the periods for performing the Work are reasonable, and that the Bidder's Work can be substantially complete by its applicable date for Substantial Completion.

If the successful Bidder does not have its Work on the Project completed by the Date for Substantial Completion for its portion of the Work as established in the Contract Documents, the Owner shall be entitled to retain or recover from the successful Bidder, as Liquidated Damages, and not as a penalty in compliance with Ohio Revised Code Section 153.19, the amounts set forth in the Contract Documents for each and every calendar day beyond the date of Substantial Completion as extended in accordance with the Contract Documents. The Owner's right to recover Liquidated Damages shall not substitute for any right of recovery for additional costs incurred should the successful Bidder fail to complete the Contract according to the Contract Documents. Liquidated Damages are necessary in that it is impossible to precisely calculate the monetary loss to the Owner as the result of any delay in implementation.

- c. Final Completion.** Each successful Bidder shall have its work fully completed by the Dates for Final Completion set forth in the Contract Documents. By submitting a Bid for the Work, the Bidder agrees that the periods for performing the Work are reasonable, and that the Bidder's Work can be fully completed by the date for Final Completion.

If the successful Bidder does not have its Work on the Project completed by the Date for Final Completion for its portion of the Work as established in the Contract Documents, the Owner shall be entitled to retain or recover from the successful Bidder, as Liquidated Damages, and not as a penalty in compliance with Ohio Revised Code Section 153.19, the amounts set forth in the Contract Documents for each and every calendar day beyond the date of Final Completion as extended in accordance with the Contract Documents. The Owner's right to recover Liquidated Damages shall not substitute for any right of recovery for additional costs incurred should the successful Bidder fail to complete the Contract according to the Contract Documents. Liquidated Damages are necessary in that it is impossible to precisely calculate the monetary loss to the Owner as the result of any delay in implementation.

- d.** The Bidder acknowledges by submitting its Bid and entering into a contract with the Owner that such amounts of Liquidated Damages represent a reasonable estimate of the actual damages that the Owner would incur if the work were not completed by the foregoing dates. These Liquidated Damages are damages for loss of use of the Project, and the successful Bidder in addition to the Liquidated Damages will be obligated to indemnify and hold the Owner harmless from any claims, and if the Work on the Project is accelerated because of delay, for all costs related to the acceleration of the Work, as provided in the Contract Documents.

19. PREVAILING WAGE

The Bidder to whom the Contract is awarded shall be required to pay, as a minimum, the prevailing wage rates promulgated by the State.

20. OWNER'S RIGHT TO WAIVE DEFECTS AND IRREGULARITIES

- a.** The Owner reserves the right to waive any and all irregularities provided that the defects and irregularities do not affect the amount of the Bid in any material respect or otherwise give the Bidder a competitive

advantage.

- b. By submitting its Bid, the Bidder agrees that (i) the Owner's determination of whether a defect or irregularity affects the amount of the Bid in any material respect or otherwise gives the Bidder a competitive advantage will be final and conclusive; and (ii) the Bidder will pay the Owner's attorneys and consultants' fees related to any challenge to the bid procedure or process, brought directly or indirectly by the Bidder and/or any of its affiliates, which is unsuccessful.

21. EXECUTION OF THE CONTRACT

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 Owner-Contractor Agreement;
- b. Contract Performance and Payment Bond, if the Bidder did not submit a Bid Guaranty and Contract Performance and Payment Bond with its bid;
- c. Insurance Certificates;
- d. Contractor's Certification containing labor standards and prevailing wage requirements;
- e. Subcontractor Certification concerning labor standards and prevailing wage requirements;
- f. Contractor's Personal Property Tax Affidavit (R.C. 5719.042);
- g. Contractor's Finding for Recovery Affidavit; and,
- h. Any other documents identified in the Contract Documents for submission with the signed agreement.

The failure of the successful bidder to execute and deliver the required documents shall constitute a default that entitles the Owner to the Bidder's bid guaranty, as provided in the Ohio Revised Code.

22. MODIFICATION/WITHDRAWAL OF BIDS

- a. Modification. A Bidder may modify its Bid by written communication to the Owner addressed to the Owner, attention of the Fiscal Officer, at the Owner's address at any time prior to the scheduled closing time for receipt of Bids, provided such written communication is received by the Fiscal Officer prior to the Bid deadline. The written communication shall not reveal the Bid price, but should provide the addition or subtraction or other modification so that the final prices or terms will not be known until the sealed Bid is opened. If the Bidder's written instructions with the change in Bid reveal the Bid amount in any way prior to the Bid opening, the Bid may be rejected as non-responsive.
- b. Withdrawal Prior to Bid Deadline. A Bidder may withdraw its Bid at any time for any reason prior to the Bid deadline established in the Notice to Bidders. The request to withdraw shall be made in writing and submitted to the Owner, attention of the Fiscal Officer, at the Owner's address. The request for withdrawal must be received by the Fiscal Officer prior to the time of the Bid opening.
- c. Withdrawal After Bid Deadline.
 - i. All Bids shall remain valid and open for acceptance for a period of at least 60 days after the Bid opening; provided, however, that a Bidder may request withdrawal of its Bid from consideration after the Bid deadline when all of the following apply:
 - 1. the price of the Bid was substantially lower than the other Bids;
 - 2. the reason for the Bid being substantially lower was a clerical mistake, rather than a mistake in judgment, and was due to an unintentional and substantial error in arithmetic or an unintentional omission of a substantial quantity of work, labor, or material;
 - 3. the Bid was submitted in good faith; and,
 - 4. the Bidder provides written notice to the Owner, to the attention of the Fiscal Officer, within two (2) business days after the Bid opening for which the right to withdraw is claimed.
 - ii. No Bid may be withdrawn under this provision if the result would be the awarding of the contract on another Bid for the Bid Package from which the Bidder is withdrawing its Bid to the same Bidder.
 - iii. No Bidder who is permitted to withdraw a bid shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the person to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted, without the approval of the Owner. The person to whom the contract was awarded and the withdrawing Bidder are jointly liable to the Owner in an amount

equal to any compensation paid to or for the benefit of the withdrawing Bidder without such approval.

- iv. If a Bid is withdrawn under this provision, the Owner may award the Contract to another Bidder determined by the Owner to be the lowest responsible Bidder or the Owner may reject all Bids and advertise for other Bids. In the event the Owner advertises for other Bids, the withdrawing Bidder shall pay the costs incurred in connection with the rebidding by the Owner, including the cost of printing new Contract Documents, required advertising, and printing and mailing notices to prospective bidders, if the Owner finds that such costs would not have been incurred but for such withdrawal.

23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION

- 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 follow the EEO/nondiscrimination requirements, as applicable to the Project, that are contained in the Owner-Contractor Agreement.

END OF SECTION

BID FORM

1.01 BID SUBMITTED BY:

(Contractor)

DATED: _____, 20____

1.02 DELIVER TO:

Hartford Township
c/o Fiscal Officer, Adam Lanthorn
2 North Main Street
Hartford, Ohio 43013

1.03 Having reviewed the Contract Documents for the Project entitled:

CLOVER VALLEY ROAD RESURFACING PROJECT

for Hartford Township, Licking County, Ohio, and having also received, read and taken into account the following Addenda:

Addendum No. _____, dated _____;

Addendum No. _____, dated _____;

Addendum No. _____, dated _____;

and likewise having inspected the Site and the conditions affecting and governing the Project and confirmed the location of the site utilities and all existing structures, the undersigned hereby proposes to furnish all materials and to perform all labor, as specified and described in the said Contract Documents for all work necessary to complete the Project on a timely basis and in accordance with the Contract Documents regardless of whether expressly provided for in such Specifications and Drawings.

1.04 Before completing the Bid Form, the undersigned represents that it has carefully reviewed the Contract Documents, including but not limited to the Notice to Bidders, Instructions to Bidders, Bid Form, Form of Bid Guaranty and Contract Performance and Payment Bond, Contractor’s Affidavit (ORC 5719.042), Owner-Contractor Agreement, Special Conditions (if any), Project Specifications, and the Schedule. Failure to comply with provisions of the Contract Documents may be cause for disqualification of the Bid.

1.05 BONDS AND CONTRACT:

If the undersigned is notified of Bid acceptance, it agrees to furnish required bonds as indicated in Instructions to Bidders.

1.06 COMPLETION OF WORK:

In submitting a Bid, the undersigned agrees to execute the Owner-Contractor Agreement in the form included in the Contract Documents and to complete its work as required by the Contract Documents.

NOTE A: The wording of the Bid Form shall be used throughout, without change, alteration, or addition. Any change may cause it to be rejected.

NOTE B: Bidder is cautioned to bid only on the “Brands” specified.

2.01 BID:

All labor and material for the contracts listed below. Bidder is to fill in all blanks related to the Bid Package for which a Bid is being submitted. If no Bid is submitted for an item, then insert "NO BID" in the blank. For alternate items, indicate whether the amount stated is in addition to or a deletion from the base bid amount.

**INSERT LICKING COUNTY ENGINEER
BID FORM_[AM8]**

LICKING COUNTY ENGINEER BID FORM

PROJECT: Resurfacing of Clover Valley Road in Hartford Township, Licking County, Ohio

Length	Width/Ft
11,567' (2.19 miles)	20.0

LIMITS: Clover Valley Rd. (Foundation Rd. to Knox Co. Line)

SCOPE: Resurface with 1.5" Item 441 Asphalt Concrete Surface Course, Type 1, (448), PG64-22. Include Item 617 Compacted Aggregate Shoulder 1' wide x 1.5" depth.

<u>QUAN.</u>	<u>UNIT</u>	<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNITS \$</u>	<u>TOTAL\$</u>
2,024	GAL.	407	Tack Coat (0.075 gal./s.y.)	_____	_____
1,125	C.Y.	441	Asphalt Concrete Surface Course, Type 1, (448), PG64-22, 1.5"	_____	_____
107	C.Y.	617	Compacted Aggregate Shoulder	_____	_____
54	FT	644	Stop Bar	_____	_____
1	LUMP	614	Maintaining Traffic	_____	_____
	LUMP	624	Mobilization	_____	_____
TOTAL BID:					_____

- NOTES:**
1. An extra 5% has been added to the quantity of 441 for leveling, Intersections and Driveways
 2. Provide a Butt Joint at intersections per ODOT Std. Dwg BP-3.1. Payment included in Surface Course.
 3. Three stop bar locations; 1 at Foundation Rd and 2 at School Lane Road (North and South)

COMPANY: _____

ADDRESS: _____

SIGNATURE: _____

DATE: _____

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3.01 INSTRUCTIONS FOR SIGNING

- A. The person signing for a sole proprietorship must be the sole proprietor or his/her authorized representative. The name of the sole proprietor must be shown below.
- B. The person signing for a partnership must be a partner or his/her authorized representative.
- C. The person signing for a corporation must be the president, vice president or other authorized representative; or he/she must show authority, by affidavit, to bind the corporation.
- D. The person signing for some other legal entity must show his/her authority, by affidavit, to bind the legal entity.

4.01 BIDDER CERTIFICATIONS. The Bidder hereby acknowledges that the following representations in this Bid are material and not mere recitals:

1. The 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.
2. The Bidder represents that the Bid contains the name of every person interested therein and is based upon the Standards specified by the Contract Documents.
3. The Bidder has visited the Project Site, become familiar with local conditions and has correlated personal observations about the requirements of the Contract Documents. The Bidder has no outstanding questions regarding the interpretation or clarification of the Contract Documents.
4. The Bidder and each person signing on behalf of the Bidder certifies, and in the case of a Bid by joint venture, each member thereof certifies as to such member'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, or 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; (c) no attempt has been made or will be made by the Bidder to induce any other Person to submit or not to submit a bid for the purpose of restricting competition; and, (d) the statements made in the Bidder's Affidavits included in the Contract Documents are true and correct, to the best of the Bidder's knowledge and information.
5. The Bidder will execute the Owner-Contractor Agreement in the form included with the Contract Documents, if a Contract is awarded on the basis of this Bid, and if the Bidder does not execute the Owner-Contractor Agreement 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.
6. The 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 Project site, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
7. The Bidder agrees to furnish any information requested by the Owner or the Owner's authorized representative to evaluate that the Bidder is responsible and that the Bid is responsive to the specifications.
8. The Bidder agrees to furnish the submittals required by the Instructions to Bidders for execution of the Owner-Contractor Agreement within seven (7) calendar days of the date of the Notice of Award.
9. The Bidder certifies that it has no unresolved findings for recovery issued by the Auditor of State.

NOTE: The Bidder should review the Contract Documents and the Site and conditions under which the Work will be performed so that he can give the acknowledgments contained above.

LEGAL NAME OF BIDDER: _____

BIDDER IS: _____

(sole proprietor, partnership, corporation or other legal entity)

NAME & TITLE OF PERSON LEGALLY AUTHORIZED TO BIND BIDDER TO A CONTRACT:

Name	Title
	SIGNATURE: _____
	ADDRESS: _____ _____
	TELEPHONE: _____
	FAX: _____
	FEDERAL TAX I.D. # _____
	DATE SIGNED _____

When the Bidder is a partnership or a joint venture, state name and address of each partner in the partnership or participant in the joint venture below:

Name	Address
Name	Address
Name	Address
Name	Address

END OF SECTION

**BID GUARANTY AND
CONTRACT PERFORMANCE AND PAYMENT BOND**

(O.R.C. § 153.571)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____
_____, ("Contractor") as principal and _____
_____ as sureties are hereby held and firmly bound unto _____ Township, Licking County, Ohio, as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on _____, 20____, to undertake _____ [INSERT BID PACKAGE NUMBER AND DESCRIPTION] in connection with the construction of the **CLOVER VALLEY ROAD RESURFACING 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 Alternates 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 add Alternates. Alternatively, if the blank is filled in the amount stated must not be less than the full amount of the bid including add 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 this _____ day of _____, 20_____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above named principal has submitted a bid for work on the Project.

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; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, 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, 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.

Now also, if the said principal shall well and faithfully do and perform the things agreed by said principal to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, 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 materialman 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; and surety shall indemnify the obligee against all damage suffered by failure of the principal to perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material therefor and to pay all lawful claims of subcontractors, materialmen, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract and surety further agrees and assents that this undertaking is for the benefit of any subcontractor, material man, or laborer having a just claim, as well as for the obligee; 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 therefore shall in any wise affect the obligations of said surety on its bond.

The said surety further stipulates that it is authorized to execute bonds in the State of Ohio and that the liability incurred is within the limits of Section 3929.02 of the Ohio Revised Code.

Signed and sealed this ____ day of _____, 20 ____.

(PRINCIPAL) (Seal)

By: _____

Printed Name & Title: _____

(SURETY) (Seal)

By: _____

Printed Name & Title: _____

NAME OF SURETY'S AGENT

Surety's Agent's Address: _____

Surety's Agent's Telephone Number: _____

Surety's Agent's Fax Number: _____

NON-COLLUSION AFFIDAVIT

STATE OF _____
SS

COUNTY OF _____

Bid Identification _____

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

_____ of _____,

(sole owner, a partner, president, secretary, etc.)

(Contractor)

the party making the foregoing bid; that such bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; that such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of said bidder or of any other bidder, or to fix any overhead, profit, or cost element of such bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements contained in such bid are true; and, further that said bidder has not, directly or indirectly, submitted his/her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

SIGNED _____

TITLE _____

Subscribed and sworn to before me this _____ day of _____, 20_____.

(SEAL)

Notary Public

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NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY AFFIDAVIT
 (THIS AFFIDAVIT IS PART OF THE BID)

STATE OF _____
 _____ SS

COUNTY OF _____

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

_____ of _____,

(sole owner, a partner, president, secretary, etc.)

(Contractor)

the party making the foregoing bid; that such party as bidder does not and shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, religion, handicap, military status, familial status or national origin. If awarded the bid and contract under this proposal, said party shall take affirmative action to insure that applicants are employed and that employees are treated, during employment, uniformly and without regard to race, creed, color, sex, age, religion, handicap, military status, familial status, or national origin. If successful as the lowest responsible bidder under the foregoing proposal, this party shall post non-discrimination notices in conspicuous places available to employees and applicants for employment setting forth the provisions of this affidavit.

Furthermore, said party agrees to abide by the assurance found in Section 153.59 of the Ohio Revised Code in the Contract Provisions with the Owner if selected as the successful bidder by the Owner.

SIGNED _____

TITLE _____

Subscribed and sworn to before me this _____ day of _____, 20_____.

(SEAL)

 Notary Public

END OF SECTION

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OWNER-CONTRACTOR AGREEMENT

OWNER:

Hartford Township
2 North Main Street
Hartford, Ohio 43013

Project Contact: Fiscal Officer Adam Lanthorn
Phone: (614) 204-2082
Email: fiscalofficer@hartfordtp.net

Contract: _____

Alternates: _____

Contractor: _____

Address: _____

Fax: _____

Date: _____

PROJECT:

**CLOVER VALLEY ROAD
RESURFACING PROJECT**

This document is an agreement between the Owner and the Contractor for the Work described in the Contract Documents related to the Contract identified above for the Project and is entered into as of the date set forth above ("Agreement").

The Owner and the Contractor agree as set forth in the following paragraphs:

1. **CONTRACT DOCUMENTS**. All applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

The Contract Documents consist of the following documents:

- A. Notice to Bidders;
- B. Instructions to Bidders;
- C. Bid Form;
- D. Owner-Contractor Agreement;
- E. Specifications;
- F. Addenda issued;
- G. Contractor's Non-Collusion Affidavit;
- H. Contractor's Qualifications Statement;
- I. Contractor's Personal Property Tax Affidavit (R.C. 5719.042);
- J. Contractor's Finding for Recovery Affidavit;
- K. Contractor's Non-Discrimination and Equal Employment Opportunity Affidavit;
- L. Contractor's Affirmative Action Program, if applicable (R.C. 125.111, OAC 123:2-3-02);
- M. Modifications issued after the execution of the contract, including:
 - i. A written amendment to the Agreement signed by both parties;
 - ii. A Change Order; or,
 - iii. A Work Change Directive.

The Contract Documents are complementary; what is required by one is as binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

The Contract Documents shall form part of this Agreement and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

2. **TIME FOR COMPLETION AND PROJECT COORDINATION.**

A. **DATE FOR COMMENCEMENT.** The date for commencement of the Work shall be the date established in the written Notice to Proceed issued by the Owner to the Contractor.

B. **MILESTONE COMPLETION DATES.** The Milestone Completion Dates for the Project are as follows:

Milestone Date No. 1: _____.

Milestone Date No. 2: _____.

Milestone Date No. 3: _____.

C. **DATE FOR SUBSTANTIAL COMPLETION.** The Date for Substantial Completion of the Project is

D. **DATE FOR FINAL COMPLETION.** The Date for Final Completion of the Project is

E. **LIQUIDATED DAMAGES.** If the Contractor does not have its Work on the Project complete by the Contractor's Milestone Date(s) (if any), Date for Substantial Completion or Date for Final Completion for its portion of the Project, the Contractor shall pay the Owner (and the Owner may set off from sums coming due the Contractor) liquidated damages in the per diem amounts as set forth below:

- i. **Milestone Dates.** For each calendar day for which Contractor has not yet completed its Work required for each Milestone (if any), Owner may without Change Order, deduct .5% (one half percent) of the contract price from any amount due the Contractor, or if necessary, Contractor will pay to Owner .5% (one half percent) of the contract price. The Owner and Contractor agree that any such deduction or payment will not operate as a penalty, but as liquidated damages. The Owner and Contractor agree that in the event of such delay in reaching the Milestone Date(s), Owner may incur damages that are difficult to calculate and the liquidated damages provided for herein are reasonable.
- ii. **Substantial Completion.** For each calendar day for which Contractor has not yet achieved Substantial Completion (if applicable), Owner may without Change Order, deduct .5% (one half percent) of the contract price from any amount due the Contractor, or if necessary, Contractor will pay to Owner .5% (one half percent) of the contract price. The Owner and Contractor agree that any such deduction or payment will not operate as a penalty, but as liquidated damages. The Owner and Contractor agree that in the event of such delay in reaching Substantial Completion, Owner may incur damages that are difficult to calculate and the liquidated damages provided for herein are reasonable.
- iii. **Final Completion.** For each calendar day for which Contractor has not yet achieved Final Completion, Owner may without Change Order, deduct .5% (one half percent) of the contract price from any amount due the Contractor, or if necessary, Contractor will pay to Owner .5% (one half percent) of the contract price. The Owner and Contractor agree that any such deduction or payment will not operate as a penalty, but as liquidated damages. The Owner and Contractor agree that in the event of such delay in reaching Final Completion, Owner may incur damages that are difficult to calculate and the liquidated damages provided for herein are reasonable.

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. Permitting Contractor to continue and complete the Work or any part thereof after any specified Contract Time will in no way operate as a waiver of any right of the Owner under this Agreement.

3. **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 (\$ _____), subject to additions and deductions as provided in the Contract Documents. The Contract Sum includes 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 Sum includes the following:

Base Bid Amount: \$ _____

Alternate No. ___ \$ _____

Alternate No. ___ \$ _____

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.

4. **PAYMENT.** As work on the project as specified in this contract is completed, Contractor shall promptly submit an invoice to Adam Lanthorn, Fiscal Officer, at P.O. Box 203, Croton, Ohio 43013. The Township agrees to pay for the services provided in the contract, not to exceed the amount designated in the contract.

5. **PERFORMANCE AND PAYMENT BONDS.**

- A. **DELIVERY.** Simultaneously with his/her delivery of the executed contract, the contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with the contract, as specified in the Contract Documents. The bond shall be for 100% of the contract price and in the form included in these Bid Documents, or such other form that meets the requirements of R.C. 153.57. If the contractor submitted a combined Bid Guaranty and Contract Performance and Payment Bond with its Bid, that form of Bond shall satisfy the Contractor's requirement to provide a Contract Performance and Payment Bond as described herein. A Payment Bond and Performance Bond are required. Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their Power of Attorney.
- B. **SURETY.** The surety on such bond or bonds shall be duly licensed or authorized in Hartford Township, Licking County, Ohio to issue bonds for the limits and coverages so required, and must be satisfactory to the owner. All bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, and US Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.
- i. **Bankruptcy.** If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Section 5(B), Contractor shall promptly notify Owner and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Section 5(B).
- C. **MATERIAL DEFAULT OR TERMINATION.** If the Owner notifies the Contractor's surety that the Contractor is in material default, the surety will complete its investigation of the claimed material default

within 21 days. The surety is advised to start looking for a replacement contractor upon notice of material default. As part of its investigation, the surety shall promptly visit the offices of the Contractor, and Owner to inspect and copy the available Project records. The Owner, and Contractor, upon written request by the surety, shall make such records available during regular business hours for such inspection and copying. The Owner's making such records available as provided herein shall satisfy the Owner's obligation to the surety to furnish documents for the investigation. The surety will provide the Owner with the results of its investigation, including any written report or documents.

If the Owner terminates the Contract and the surety proposes to take over the Work, the surety shall do so no later than the later of the expiration of the 21-day investigation period or 10 days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Contract, and the surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents. If the Contractor is terminated for cause, the replacement contractor shall not be the Contractor or its employees, unless the Owner agrees in writing. In the event the Surety takes over the Project, the surety's obligation shall not be limited to the penal sum of the Bond.

If the surety does not propose an acceptable contractor as required by this Section 5(C), the Owner may complete the Work by such means, as it deems appropriate. In the event the Owner agrees to accept a replacement contractor, the replacement contractor shall furnish its own bond for the replacement contractor's scope of work, and neither the Contractor nor the surety shall be relieved of their obligations under the Contract Documents.

This Section 5(C) is in addition to any other rights of the Owner under the Contract Documents and is not intended to create any rights of the surety, including but not limited to the right to take over the Contractor's obligations.

In the event of the Contractor's termination and if the surety does not take over the Work as provided in this Section 5(C), the Owner may take possession of and use all materials, facilities and equipment at the Project Site or stored off-site for which Owner has paid in whole or in part.

6. INSURANCE REQUIREMENTS.

- A. EVIDENCE OF INSURANCE. Before any work at the Site is started, Contractor shall deliver to the Owner, with copies to each additional insured identified in the Contract Documents, Owner-approved copies of certificates of insurance, copies of endorsements, and other evidence of insurance, which Contractor is required to purchase and maintain in accordance with this Section 6. Additionally, Contractor shall not allow any Subcontractor to commence work on his/her subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.
- B. WORKERS COMPENSATION INSURANCE. All Contractors and Subcontractors shall acquire and maintain during the term of the Contract, Worker's Compensation insurance in full compliance with the laws of the State of Ohio.
- C. CONTRACTOR'S LIABILITY INSURANCE.
 - i. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - a. Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - b. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - c. Claims for damages because of bodily injury sickness or disease, or death of any person other than

- Contractor's employees;
- d. Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 1. By any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 2. By any other person for any other reason;
 - e. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located including loss of use resulting therefrom; and,
 - f. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- ii. **Policies of Insurance.** The minimum limits of liability for the required insurance policies listed in Section 6(C)(i) shall not be less than the following unless a greater amount is required by law:
- a. Commercial General Liability ("CGL"): Bodily injury (including death and emotional distress) and property damage with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. CGL shall include (i) Premises-Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, (viii) Personal/Advertising Injury with Employment Exclusion deleted, (ix) Stopgap liability with Ohio Intentional Tort endorsement for \$1,000,000 limit, and (x) per project aggregate endorsement.
 - b. Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined single limit of \$1,000,000 per person and \$1,000,000 each accident.
 - c. Such policies shall be supplemented by an umbrella policy, also written on an occurrence basis, to provide additional protection to provide coverage in the total amount of \$1,000,000 for each occurrence and \$1,000,000 aggregate for contracts with a Contract Price of \$250,000 or less; \$2,000,000 each occurrence and \$2,000,000 aggregate for contracts with a Contract Price greater than \$250,000 but less than or equal to \$500,000; \$3,000,000 each occurrence and \$3,000,000 aggregate for contracts with a Contract Price greater than \$500,000 but less than or equal to \$1,000,000; and \$5,000,000 each occurrence and \$5,000,000 aggregate for contracts with a Contract Price greater than \$1,000,000.
- iii. **Additional Provisions.** The following provisions shall also apply to the insurance provided by the Contractor:
- a. Contractor's insurance shall be primary and non-contributory.
 - b. Insurance policies shall be written on an occurrence basis only.
 - c. The Contractor shall require all Subcontractors to provide Workers' Compensation, CGL, and Automobile Liability Insurance with the same minimum limits specified herein, unless the Owner agrees to a lesser amount.
 - d. Owner shall be named as certificate holder on the policies of insurance maintained by Contractor. The Contractor shall provide each additional insured with a certificate of insurance.
 - e. The additional insured endorsement shall be ISO 20 10 11 85 or its equivalent so that Completed Operations liability extends to the additional insured's after the completion of the Project.
 - f. The policies of insurance shall include products and completed operations insurance.
 - g. The policies of insurance shall include contractual liability insurance covering Contractor's indemnity obligations under Section 6.
 - h. The policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed with respect to coverage for the Project or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Contract Documents to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Section 6(A) will so provide);
 - i. The policies of insurance shall remain in effect at least until final payment and at all times

thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Section 25(G).

- j. The policies of insurance shall with respect to products and completed operations insurance, remain in effect for at least two years after final payment.
 - 1. Contractor shall furnish Owner and each other additional insured identified in the Contract Documents, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

7. INDEMNIFICATION.

- A. The Contractor hereby releases the Owner and agrees that the Owner shall not be liable for, and the Contractor hereby indemnifies, defends and holds the Owner harmless against, all liabilities, claims, costs and expenses including attorney fees, imposed upon or incurred by the Owner on account of (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by the actions or omissions, whether negligent or otherwise, of the Contractor or any of its employees, officers, agents, subcontractors, invitees or licensees, and (b) any failure by the Contractor to comply with provisions of Chapter 4123 of the Ohio Revised Code. The Contractor further agrees that it shall indemnify, defend and hold the Owner harmless against all liabilities, claims, costs and expenses including attorney fees, arising out of or relating to the performance of the Work, including the breach of any warranty provided in the Contract Documents. The Contractor's obligations under this Section 7(A) are joint and several.
- B. In the event the Owner provides its written consent to a Subcontractor, the Contractor shall indemnify and save the Owner and the Owner's agents and employees harmless from all claims growing out of the lawful demands of Subcontractor's laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, his/her Surety, if applicable, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made under the Contract Documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments in good faith.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and its officers, directors, partners, employees, agents, consultants and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.
- D. The maintaining of such insurance as outlined in Section 6 shall in no way constitute a waiver of legal liability for damage to any adjoining buildings or their contents or the work and property of others on the site beyond the limits of insurance thus maintained. The contractor shall hold the owner free and harmless from any and all injuries and damages resulting from performance of this contract by the contractor or by his/her Subcontractors.
- E. In any and all claims against Owner or any of its respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 6 shall not be limited in any way by any limitation on the amount or type of

damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8. WAGE RATES.

- A. Contractor and all subcontractors hired by contractor shall comply with R.C. 4115.03 to R.C. 4115.16. In the event that the rate of wages paid for any tract or occupant in the locality where such work is being performed are under current collective agreements or understandings between bona fide organizations of labor and employer, then the wages to be paid shall be not less than such agreed wage rates, nor less than the minimum rates compiled by the Department of Industrial Relations of the State of Ohio. A copy of these prevailing rates of wages is available upon request.
- B. Every Contractor and Subcontractor who is subject to this contract shall, as soon as he/she begins performance under his/her contract with the Owner, supply the owner a schedule of the dates on which he/she is required to pay wages to employees. He/She shall also deliver to the prevailing wage coordinator within three (3) weeks after each pay date, a certified copy of his/her payroll which shall exhibit for each employee paid any wages, name, current address, social security number, number of hours worked each day of the pay period and the total for each week, hourly rate of pay, job classification, fringe payments, and deductions from wages. The certification of each payroll shall be executed by the Contractor, Subcontractor, or duly appointed agent thereof and shall recite that the payroll is correct and complete and that the wage rate shown is not less than those required by the contract.
- C. Insofar as possible, local labor shall be employed on this work.

9. SAFETY AND PROTECTION.

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - i. all persons on the Site or who may be affected by the Work;
 - ii. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and,
 - iii. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. The Contractor shall comply with the safety standards provisions of applicable laws, building and construction codes and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, and requirements of the Occupational Safety and Health Act of 1980 (Public Law 91-596), and the requirements of Title 29 of the Code of Federal Regulations, Section 1518 as published in the "Federal Register," Volume 36, No. 75, Saturday, April 17, 1971. The Contractor shall also comply with Chapter 4101:9-2 of the Ohio Administrative Code prohibiting the Employment of Minors in Occupations Hazardous or Detrimental to their health.
- D. The Contractor shall maintain at his/her office or other well-known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured at the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing

arrangement for removal of injured persons to a hospital or a doctor's care.

- E. Adequate lights, signs and barricades shall be used to maintain traffic and safety for vehicular and pedestrian traffic during the course of this contract.
- F. All damage, injury, or loss to any property referred to in Section 9(a)(ii) and (iii) caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or anyone employed by Owner for whose acts it may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

10. PERMITS. The contractor is responsible for obtaining and paying for all necessary permits and licenses from the proper authorities. The contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified. If the contractor observes that the Contract Documents are at variance therewith, he/she shall promptly notify the owner in writing.

11. SUPERVISION AND SUPERINTENDENCE.

- A. The Contractor will supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. The Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the contractor as the contractor's representative at the site. The Supervisor shall have full authority to act on behalf of the contractor and communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present and on the site at all times as required to perform adequate supervision and coordination of the work.
- C. The Owner and its representatives will at all times have access to the work. In addition, authorized representatives and agents of any participating federal or state agency shall be permitted to inspect all work, materials, pay rolls, records of personnel, invoices of materials, and other relevant data and records. The contractor shall provide proper facilities for such access and observation of the work and also for any inspection or testing thereof.
- D. The Contractor shall submit a proposed Program of Operation and Progress Schedule, showing clearly how he/she proposes to conduct the work as to bring about the completion of his/her work within the time limit specified. This Program and Schedule shall outline the proposed sequence of operations, the rates of progress and the dates when his/her work will be sufficiently advanced to permit the installation of the work under other contracts, and the estimated progress payments due under the Contract Documents. The work under these Contract Documents shall be so scheduled that as structures are completed, they can be placed into useful operation with a minimum of delay. The Program and Schedule shall be subject to the approval of the Owner.
 - i. **Notice of Delays.** The Contractor shall give the Owner verbal notice of any delay affecting its Work within two (2) business days of the commencement of the delay. In addition, the Contractor shall give the Owner written notice of the delay within ten (10) business days of the commencement of the delay with specific recommendations about how to minimize the effect of the delay. The written notice of the delay shall conspicuously state that it is a "**NOTICE OF DELAY.**" The failure to give either of the required notices will be an irrevocable waiver of the Contractor's right to seek an extension of time and/or compensation or damages for the delay. Any extensions of time will only be granted pursuant to the procedures set forth under Section 13. The Contractor acknowledges and agrees that timely notice of delays gives the Owner the opportunity to take action to minimize the cost and/or effect of delays.

ii. **Continuing the Work.** Contractor shall carry on the Work and adhere to the Program of Operation and Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Owner and Contractor may otherwise agree in writing.

E. All construction as proposed along all City, Township, County, State and Federal roads including storage and stockpiling of materials, is to be conducted within the limits of the public right-of-way. Bracing, sheeting and shoring shall be used to keep all construction work within the construction limits unless work agreements are secured from the adjacent property owners. It is the Contractor's responsibility to secure these work agreements, if deemed necessary. Copies of the work agreements shall be delivered to the Licking County Engineer and the Owner prior to any work beginning on the affected property.

12. **SUBCONTRACTING.**

A. The Contractor shall not sublet, sell, transfer or assign any portion of the contract without written consent of the owner or his/her designated agent. When such consent is given, the Contractor will be permitted to sublet a portion thereof, but shall perform with his/her own organization, work amounting to no less than 50% of the total contract cost. No subcontract or transfer of contract shall in any way release the Contractor of his/her liability under the contract and bonds. Where Owner after due investigations has reasonable objections to any proposed Subcontractor, Supplier, or other entity, it may request Contractor to submit an acceptable substitute with an increase in the Contract Price.

B. The Contractor shall not award work to subcontractor(s) without prior written approval of the Owner. The Contractor shall be fully responsible to the Owner for the acts or omissions of the subcontractor(s), and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

C. If the Contract Documents require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Contract Documents, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner to reject defective Work.

D. Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

i. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier or other individual or entity, nor

ii. shall create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

E. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

F. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or

furnishing any of the Work to communicate with Owner through Contractor.

All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Section 6, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and all other individuals or entities identified in the Contract Documents to be listed as insured's or additional insured's (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

13. CHANGES IN WORK, CONTRACT PRICE, CONTRACT TIMES.

- A. AUTHORIZED CHANGES IN THE WORK. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved, which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. UNAUTHORIZED CHANGES IN THE WORK. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented by appropriate Change Order, except in the case of an emergency as provided in Section 22 or in the case of uncovering Work as provided in Section 25(D).
- C. EXECUTION OF CHANGE ORDERS. Owner and Contractor shall execute appropriate Change Orders covering:
 - i. changes in the Work which are: (i) ordered by Owner pursuant to Section 13(A), (ii) required because of acceptance of defective Work under Section 25(H) or Owner's correction of defective Work under Section 25(I), or (iii) agreed to by the parties;
 - ii. changes in the Contract Price or Contract Times which are agreed to by the parties.
- D. NOTIFICATION TO SURETY. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change. Failure to provide notice to the surety of any such change shall not exonerate the surety from its obligations under the bond.
- E. CHANGE OF CONTRACT PRICE. The Contract Price may only be changed by a Change Order. Authorized alterations in plans or quantities of work involving work not covered by unit prices in the proposal shall be paid for as stipulated in the change order authorizing such work.
- F. CHANGE OF CONTRACT TIME. The Contract Times may only be changed by a Change Order.
- G. DELAYS.
 - i. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay, except for weather delays resulting in workdays lost from December 1 to April 30.

- ii. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Section 13(G)(ii).
- iii. Owner shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- iv. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

14. REPORTING AND RESOLVING DISCREPANCIES.

A. REPORTING DISCREPANCIES.

- i. **Contractor's Review of Contract Documents Before Starting Work.** Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby.
- ii. **Contractor's Review of Contract Documents During Performance of Work.** If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Owner in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Section 22) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Section 13.
- iii. Contractor shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.
- iv. If Contractor proceeds with work that Contractor had actual knowledge or should have known that a conflict, error, ambiguity, or discrepancy existed as indicated above, correction of work constructed without such notification to Owner shall be at Contractor's expense, (except in an emergency as authorized by Section 22).

B. RESOLVING DISCREPANCIES.

- i. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such

an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

- ii. Within the Contract Documents, requirements of the Agreement shall take precedence over the Specifications, which shall take precedence over the Drawings.
- iii. Within a particular Contract Document, figure dimensions on Drawings shall take precedence over general Drawings. Specific instructions or specifications shall take precedence over general instructions or specifications.

15. DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS.

- A. NOTICE. If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:
- i. is of such a nature as to require a change in the Contract Documents; or
 - ii. differs materially from that shown or indicated in the Contract Documents; or
 - iii. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, within two (2) business days after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Section 22), notify Owner in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so. Failure to provide such notice as required herein or disturbing the differing condition shall be an irrevocable waiver of Contractor's right to any form of additional compensation, be it in time or money, arising out of the differing subsurface or physical condition.

- B. OWNER'S REVIEW. After receipt of written notice as required by Section 15(A), Owner will promptly review the pertinent condition, and determine the necessity of Owner's obtaining additional exploration or tests with respect thereto.
- C. POSSIBLE PRICE AND TIMES ADJUSTMENT. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
- i. such condition must meet any one or more of the categories described in Section 15(A); and
 - ii. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Section 13.

Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

- i. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
- ii. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
- iii. Contractor failed to give the written notice as required by Section 15(A).

16. HAZARDOUS ENVIRONMENTAL CONDITION AT SITE.

- A. The provisions of Section 15 do not apply to a Hazardous Environmental Condition uncovered or revealed

at the Site.

- B. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site, which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- C. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Section 22); and (iii) notify Owner (and promptly thereafter confirm such notice in writing). Owner determines the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.
- D. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely.
- E. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Section 24.
- F. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, and its officers, directors, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Section 16(F) shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

17. **LABOR.** Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

18. **SERVICES, MATERIALS, AND EQUIPMENT.**

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Owner, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. Suppliers shall be deemed to impliedly warrant that their products and all component materials incorporated into them are suitable and fit for the intended use of such products and shall be free from defect in material, workmanship or design, such warranty to run to the benefit of Owner. The foregoing applies whether the products or their component materials are specified in the Contract Documents or are of Supplier's design.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned,

and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

19. SUBSTITUTES AND “OR-EQUALS”.

- A. MATERIALS AND EQUIPMENT. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Owner for review.
- B. SUBSTITUTE CONSTRUCTION METHODS OR PROCEDURES. If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Owner. Contractor shall submit sufficient information to allow Owner, in Owner’s sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents.
- C. OWNER’S EVALUATION. Owner will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Sections 19 (A) and (B). Owner may require Contractor to furnish additional data about the proposed substitute item. Owner will be the sole judge of acceptability. No “or equal” or substitute will be ordered, installed or utilized until Owner’s review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an “or equal.” Owner will advise Contractor in writing of any negative determination.
- D. SPECIAL GUARANTEE. Owner may require Contractor to furnish at Contractor’s expense a special performance guarantee or other surety with respect to any substitute.
- E. CONTRACTOR’S EXPENSE. Contractor shall provide all data in support of any proposed substitute or “or-equal” at Contractor’s expense.

20. USE OF SITE AND OTHER AREAS.

- A. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- B. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, and its officers, directors, partners, employees, agents, consultants and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- D. REMOVAL OF DEBRIS DURING PERFORMANCE OF THE WORK. During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- E. **CLEANING.** Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
 - F. **LOADING STRUCTURES.** Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
21. **RECORD DOCUMENTS.** Contractor shall maintain in a safe place at the Site two record copies of all Drawings, Specifications, Addenda, Change Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Owner for reference. Upon completion of the Work, these record documents, samples, and shop drawings shall be delivered by Contractor to Owner.
22. **EMERGENCIES.** In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Owner determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order will be issued.
23. **CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE.**
- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one year from the date of substantial completion. The Contractor warrants and guarantees for a period of one year from the date of substantial completion of the improvement that it is free from all defects due to faulty materials or workmanship, and the Contractor shall promptly make corrections as may be necessary by reason of such defects. The Owner will give notice of observed defects in accordance with the provisions of Section 25. In the event that the Contractor should fail to make repairs, adjustments, or other work, which may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The Contract Bond shall remain in full force and effect through the guarantee period.
 - B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - i. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - ii. normal wear and tear under normal usage.
 - C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - i. observations by Owner;
 - ii. payment by Owner of any progress or final payment;
 - iii. the issuance of a certificate of Substantial Completion by Owner or any payment related thereto by Owner;
 - iv. use or occupancy of the Work or any part thereof by Owner;
 - v. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Owner;
 - vi. any inspection, test, or approval by others; or
 - vii. any correction of defective Work by Owner.

24. OTHER WORK AT THE SITE.

- A. **RELATED WORK AT THE SITE.** Owner may perform other work related to the Project at the Site with Owner's employees or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then written notice thereof will be given to Contractor prior to starting any such other work.
- i. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
 - ii. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Section 24, Contractor shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- B. **COORDINATION.** If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Contract Documents:
- i. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - ii. the specific matters to be covered by such authority and responsibility will be itemized; and
 - iii. the extent of such authority and responsibilities will be provided.

Unless otherwise provided in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.

- C. **LEGAL RELATIONSHIPS.** Each other direct contract of Owner under Section 24(A) shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

25. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.

- A. **NOTICE OF DEFECTS.** Prompt notice of all defective Work of which Owner has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Section 25.
- B. **ACCESS TO WORK.** Owner, its consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

- C. TESTS AND INSPECTIONS. Contractor shall give Owner timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- i. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval.
 - ii. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner.
 - iii. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation.
 - iv. Uncovering Work as provided in Section 25(C)(iii) shall be at Contractor's expense unless Contractor has given Owner timely notice of Contractor's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.
- D. UNCOVERING WORK. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price.
- E. OWNER MAY STOP THE WORK. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.
- F. CORRECTION OR REMOVAL OF DEFECTIVE WORK. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others). When correcting defective Work under the terms of this Section 25(F) or Section 25(G), Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- G. CORRECTION PERIOD.
- i. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Section 20 is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

- a. repair such defective land or areas; or
 - b. correct such defective Work; or
 - c. if the defective Work has been rejected by Owner, remove it from the Project and replace it with work that is not defective, and
 - d. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- ii. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
 - iii. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
 - iv. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Section 25(G), the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
 - v. Contractor's obligations under this Section 25(G) are in addition to any other obligation or warranty. The provisions of this Section 25(G) shall not be construed as a substitute for, or limitation upon, or a waiver of the provisions of any applicable statute of limitation or repose.

H. ACCEPTANCE OF DEFECTIVE WORK. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted.

I. OWNER MAY CORRECT DEFECTIVE WORK.

- i. If Contractor fails within two (2) business days of a written notice from Owner, or such longer time as may be stated in such notice, to correct, or take reasonable steps to commence to correct, defective Work or to remove and replace, or take reasonable steps to remove and replace, rejected Work as required by Owner in accordance with Section 25(F), or if Contractor fails to perform the Work in accordance with the Contract Documents, Owner may correct or remedy any such deficiency. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable costs arising out of or related to the investigation and correction of correcting such deficiencies, including Owner's attorneys' and consultants' fees and expenses and other expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Contractor irrevocably designates the Owner, as the Contractor's attorney-in-fact to execute the Change Orders provided for in this Subparagraph.
- ii. In exercising the rights and remedies under this Section 25(I), Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and

incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, and Owner's other contractor's access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- iii. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Section 25(I) will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- iv. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Section 25(I).

26. SUSPENSION OF WORK AND TERMINATION.

A. OWNER MAY SUSPEND THE WORK. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor. Contractor shall resume the Work on the date so fixed.

B. OWNER MAY TERMINATE FOR CAUSE.

- i. The occurrence of any one or more of the following events will justify termination for cause:
 - a. Contractor's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Program of Operation and Progress Schedule established under Section 11(D) as adjusted from time to time pursuant to Section 11(D));
 - b. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - c. Contractor's disregard of the authority of Owner; or
 - d. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- ii. If one or more of the events identified in Section 26(B)(i) occur, Owner may, after giving Contractor (and surety) three (3) business days' written notice of its intent to terminate the services of Contractor:
 - a. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),
 - b. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and
 - c. complete the Work, as Owner may deem expedient.

Such termination shall be effective as of the date stated in the termination notice provided to Contractor.

- iii. If Owner proceeds as provided in Section 26(B)(ii), Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this Section Owner shall not be required to obtain the lowest price for the Work performed.

- iv. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

C. OWNER MAY TERMINATE FOR CONVENIENCE.

- i. Upon three (3) business days' written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. Such termination shall be effective as of the date stated in the written notice. In such case, Contractor shall be paid for (without duplication of any items):
 - a. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - b. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses.
- ii. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.
- iii. Contractor shall require similar provisions contained in Section 26(C) in each of its subcontracts to protect Contractor from claims by Subcontractors arising from the Owner's termination for convenience, or to minimize claims by such subcontractors. The remedy provided to Contractor under this Section 26(C) shall be the Contractor's sole remedy in the event of termination for convenience by Owner.

D. CONTRACTOR MAY STOP WORK OR TERMINATE.

- i. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Section 26(C).
- ii. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven (7) days after written notice to Owner, stop the Work until payment is made of all such amounts due Contractor, including interest thereon.

27. **LIMITATION ON OWNER'S RESPONSIBILITIES.** The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

28. **LIMITATION ON LIABILITY.** The Owner's total liability under this Agreement shall be limited to the amount set forth in the Fiscal Officer'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.

29. **GENERAL.**

- A. **MODIFICATION.** No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party, which in the case of the Owner will require the signature of the Owner or the individual authorized by the Owner to execute such documents on behalf of the Owner. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the

Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this paragraph.

- B. ELECTRONIC DATA. Copies of data furnished by Owner to Contractor or Contractor to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. ASSIGNMENT. The Contractor may not assign this Agreement without the written consent of the Owner, which the Owner may withhold in its sole discretion.
- D. LAW AND JURISDICTION. All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligation of the parties will be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Licking County Common Pleas Court, Licking County, Ohio, and each party hereby expressly consents to the jurisdiction of such court.
- E. CONSTRUCTION. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.
- F. APPROVALS. Except as expressly provided herein, the approvals and determinations of the Owner will be subject to the sole discretion of the respective party and be valid and binding on the Contractor, provided only that they be made in good faith, i.e., honestly. If the Contractor challenges any such approval or determination, the Contractor will have the burden of proving by clear and convincing evidence that it was not made in good faith.
- G. PARTIAL INVALIDITY. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.
- H. REFERENCE STANDARDS. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- I. COMPLIANCE WITH LAWS AND REGULATIONS. The Contractor, at its expense, will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work, including but not limited to Sections 153.59 and 153.60 of the Ohio Revised Code, which prohibit discrimination in the hiring and treatment of employees, with respect to which the Contractor agrees to comply and to require its subcontractors to comply.
 - i. NON-DISCRIMINATION. Contractor agrees:
 - a. That in the hiring of employees for the performance of Work under this Agreement 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, military status or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
 - b. That neither the Contractor, 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 Agreement on account of race, creed, sex, handicap, military status or color.
 - c. That there shall be deducted from the amount payable to the Contractor by the Owner under this Agreement 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.

- d. That this Agreement 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.
- J. **JOB MEETINGS.** The Contractor or one of its representatives with authority to bind the Contractor will attend job meetings as provided in the Specifications and ensure that its Subcontractors also hold regular job meetings at which safety issues and job matters are discussed as these relate to the Work being performed. The Specifications define the agenda for the meetings and designate responsibilities for taking minutes and maintaining records of such meetings. Job meetings include, but are not limited to, pre-construction meetings, weekly job meetings, weekly safety tool box meetings, and monthly safety meetings.
- K. **PROPERTY TAX AFFIDAVIT.** The Contractor's affidavit given under Section 5719.042, Ohio Revised Code, is incorporated herein.
- L. **PARTNERING.** Contractor agrees that it will participate, as part of the Contract Sum, in any partnering sessions scheduled by Owner.
- M. **ENTIRE AGREEMENT.** This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their properly authorized representatives and agree that this Agreement is effective as of the date first set forth above.

HARTFORD TOWNSHIP

CONTRACTOR: _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

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CONTRACT AFFIDAVIT

(To be completed and executed if the Contractor is a Corporation)

STATE OF: _____)
) SS
COUNTY OF: _____)

_____, being duly sworn, deposes and says that he/she is secretary of _____, a corporation organized and existing under and by virtue of the laws of the state of _____, and having its principal offices at:

(Address)

Affiant further says that he/she is familiar with the records, minute books, and by-laws of _____.

(Corporation)

Affiant further says that _____ is the
(name of corporate officer)

_____ of the corporation and is duly authorized
(corporate title)

to sign the Agreement with Hartford Township, Licking County, Ohio for the improvement project:

CLOVER VALLEY ROAD RESURFACING PROJECT

For said corporation by virtue of

_____ dated _____.
(State whether by a provision of by-laws or a resolution of the Board of Directors and its date.)

Affiant

Sworn to before me and subscribed in my presence this day _____ of _____, 20____.

Notary Public

My commission expires: _____

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CONTRACT PERFORMANCE AND PAYMENT BOND
(O.R.C. § 153.57)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned ("Contractor") as principal and _____ as sureties, are hereby held and firmly bound unto Hartford Township, Licking County, Ohio, as obligee, 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.

Signed this _____ day of _____, 20_____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas, the above-named principal did on the _____ day of _____, 20_____, enter into a contract with Hartford Township for _____ [INSERT BID PACKAGE NUMBER AND DESCRIPTION] in connection with the construction of _____ [describe project] ("Project"), which said contract is made a part of this bond the same as though set forth herein:

Now, if the said Contractor shall well and faithfully do and perform the things agreed by the Contractor to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, 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 materialman 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 therefore shall in any wise affect the obligations of said surety on its bond. The surety further stipulates that it is authorized to execute bonds in the State of Ohio and that the liability incurred is within the limits of Section 3929.02 of the Revised Code.

Signed and sealed this ____ day of _____, 20_____.

(PRINCIPAL) (Seal)

By: _____

Printed Name & Title: _____

(SURETY) (Seal)

By: _____

Printed Name & Title: _____

NAME OF SURETY'S AGENT

Surety's Agent's Address: _____

Surety's Agent's Telephone Number: _____

Surety's Agent's Fax Number: _____

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FINDING FOR RECOVERY AFFIDAVIT

(O.R.C. § 9.24)

STATE OF: _____)
) SS
COUNTY OF: _____)

Bid Identification:

_____, being first duly sworn, deposes and says that he/she is the
(Name)

_____ of _____ with offices located at
(Title) (Contractor)

(Address of Contractor)

Affiant further states, pursuant to Section 9.24 of the Ohio Revised Code, that at the time this BID was submitted,

_____ was not the subject of an unresolved finding
(Contractor)

for recovery issued by the Auditor of the State of Ohio.

Affiant

Sworn to before me and subscribed in my presence this day _____ of _____, 20_____.

Notary Public

My commission expires: _____

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**INSERT AFFIDAVIT OF COMPLIANCE
PREVAILING WAGES**

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Change Order No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:	Date of Contract:	
Contractor:	Project No.:	

The Contract Documents are modified as follows upon execution of this Change Order:

Description: _____

Attachments: (List documents supporting change): _____

CHANGE IN CONTRACT PRICE:

CHANGE IN CONTRACT TIMES:

Original Contract Price:
\$ _____

Original Contract Times: Working days Calendar days
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

[Increase] [Decrease] from previously approved
Change Orders No. _____ to _____
\$ _____

[Increase] [Decrease] from previously approved Change Orders
No. _____ to No. _____:
Substantial completion (days): _____
Ready for final payment (days): _____

Contract Price prior to this Change Order:
\$ _____

Contract Times prior to this Change Order:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

[Increase] [Decrease] of this Change Order:
\$ _____

[Increase] [Decrease] of this Change Order:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

Contract Price incorporating this Change Order:
\$ _____

Contract Times with all approved Change Orders:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

ACCEPTED:
By: _____
Owner (Authorized Signature)
Date: _____

ACCEPTED:
By: _____
Contractor (Authorized Signature)
Date: _____

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