

BID DOCUMENT

PER-C.R. 26-04.20
Rush Creek Road over Little Rush Creek
Bridge Replacement
PID# 108771
May 22, 2024

Construction Estimate: \$604,041.67

PERRY COUNTY COMMISSIONERS
212 S. Main St., Lower Level
New Lexington, OH 43764

Perry County Engineer
2645 Old Somerset Road
New Lexington, OH 43764

Completion date: June 30, 2025

EDGE Goal = 5%

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ODOT's LPA Template (ODOT Spec Book and LPA Spec Book) Required Contract Provisions
(Revised 1/23/23).

WAGE RATES

Davis-Bacon Wage Determination: General Decision Number: OH20240065 04/05/2024

INFORMATION TO BIDDERS

All proposals must be made on the forms contained herein and the bid price must be written therein, in figures only. In all items, bids must be made separately on labor and material and the total price for each unit shall be the "Total (sum of labor and material)". In the event of conflict, the "Total" of the unit price or lump sum bid shall govern. Each bidder must bid on all items, alternates, deductions and additions contained in the bidding forms. All proposals not in conformity with this notice may be considered informal and may be rejected.

Only contractors prequalified with the Ohio Department of Transportation will be eligible to submit bids for this project.

Each bidder is required to state in his proposal his name, place of residence and the names of all persons interested with him. In case of a corporation, the names of other than the president and secretary need not be given. Reference shall be furnished to establish the skill and business standing of the bidder.

The bidder must complete and submit all bidding forms. Failure to complete the forms and submit same at the bid opening will result in a non-responsive bid.

If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, he may submit to the Engineer a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. The awarding authority will not be responsible for any other explanations or interpretations of the proposed documents. If there is a conflict between the detailed plans and specifications, the detailed plans shall prevail. When a "Special Specifications" is included in the "Bidding Forms", it shall supplement and/or modify the detailed specifications included herein and shall govern whenever there is a conflict in meaning.

The bidder is required to examine carefully the site of the work, the proposal, plans and specifications, and to read and acquaint himself with the contract form for the work contemplated. The bidder, in submitting a proposal, warrants that he has investigated and is acquainted with the conditions to be encountered for performing the work including the character, quality and quantities of work to be performed and materials to be performed and materials to be furnished, the prevailing hourly wage rates for the area in which the project is located and the requirements of the contract documents hereinafter defined. It is mutually agreed that submission of a proposal shall be considered prima facie evidence that the bidder has made such examination and is satisfied as to all conditions which will affect the work.

The required contract provisions for federal-aid construction contracts (contained in ODOT's 2021 LPA template) are hereby incorporated by reference.

The quantities listed in the proposal form are to be considered as approximate and are to be used only for the comparison of the bids and as basis for computing amounts of security or penal sums of bonds to be furnished. The unit prices to be tendered by the bidders are to be tendered expressly for the scheduled quantities as they may be increased or decreased. Payments, except for lump sum contracts, will be made to the contractor for the actual quantities only of work performed or materials furnished in accordance with the plans and specifications, and it is understood that the scheduled quantities of work to be done and materials to be furnished may be increased or decreased without in any way invalidating the unit bid price.

The successful bidder will be required to execute the contract within 15 days after the award of the work to him and shall furnish bond for the faithful performance of said contract in the sum of 100 percent of the total amount of his bid. In addition to the Perry County Commissioners, ODOT shall be named as an obligee on the performance and payment bond.

The proposal and performance bonds shall be in the forms attached to the specifications with an approved surety company as surety. In case of failure to execute the contract as stated or to furnish performance bond, the bidder will be considered to have abandoned the contract and the bond or check accompanying the proposal shall be forfeited to the owner, not as penalty but as liquidated damages. Sureties must be approved by the proper authorities. The contract shall be awarded to the lowest and best bidder. Total bids will be calculated by adding the amounts bid by each bidder for such items, alternates and additions, less the deductions, so selected by the owner in determining the lowest and best bid. The owner reserves the right to reject any and all bids.

The successful bidder will be further required to furnish the owner with a complete breakdown of the lump sum bid items, to the satisfaction of the Engineer, before signing the contract documents.

In determining the award, consideration will be given to (A) whether bidder maintains a permanent place of business, (B) suitability of the bidder's plant and equipment for the work, (C) bidder's financial status and organizations, (D) bidder's record of experience in constructing improvements of this type, (E) lowest and best bidder.

Check bid deposits of any bidders except the three lowest and best bidders will be returned within 10 days after opening bids. The bid deposit of the three lowest and best bidders will be returned within 48 hours after the executed contract and required bonds have been approved by the owner.

The U.S. Department of Labor "Safety and Health Regulations for Construction" identified as Chapter XVII of Title 29, Code of Federal Regulations (CFR) Part 1926 (formerly Part 1518) and subsequent amendments are hereby made a part of these specifications.

Three (3) sets of plans and specifications will be furnished the successful contractor at no cost and any additional sets requested will be furnished at cost.

Wherever the words "Owner" or "County" are used herein, they refer to the Perry County Commissioners, Ohio.

We are advised that materials to be incorporated in this work may be purchased by the contractor free of Ohio State sales tax.

The owner reserves the right to hold bids for a period of 60 days after date of opening and to award the contract at any time during that period.

Davis-Bacon Federal wage rates apply to this federally funded project. (The Wage and Hour Division of the U.S. Department of Labor determines prevailing wage rates to be paid on federally funded or assisted construction projects.)

(A) Each contracting public authority that enters into a contract other than for printing, binding and related services, whose contractor and subcontractors are subject to chapter 4115. of the Revised Code shall, no later than ten days before the first payment of wages is payable to any employee of any contractor or subcontractor, designate and appoint one of its own employees to serve as the prevailing wage coordinator during the life of the contract. The duties of the coordinator shall include:

1. Setting up and maintaining, available for public inspection, files of payroll reports submitted by contractors and subcontractors pursuant to Chapter 4115. of the Revised Code;
2. Ascertaining from each contractor or subcontractor, at the beginning of performance under the contract, the dates during its life when payment of wages to employees are to be made;
3. Receiving from each contractor or subcontractor, a copy of his complete payroll for each date exhibiting for each employee paid any wages, his name, current address, social security number, number of hours worked each day during the pay period and the total for each week, his hourly rate of pay, his job classification, fringe payments, and deductions from his wages;
4. Establishing and following procedures to monitor the compliance by each contractor and subcontractor with the requirement imposed by this section for timely filing of copies of payroll records;
5. Reporting any delinquency in filing to the chief officer of the contracting public authority.

(B) Any contracting public authority having a permanent employee with the title, powers and functions described herein for the prevailing wage coordinator need not separately designate and appoint an employee for each public work contract entered into by the contracting public authority.

(C) Every contractor and subcontractor who is subject to Chapter 4115. of the Revised Code shall, as soon as he begins performance under his contract with any contracting public authority,

supply to the prevailing wage coordinator of the contracting public authority a schedule of the dates during the life of his contract with the authority on which he is required to pay wages to employees. He shall also deliver to the prevailing wage coordinator a certified copy of his payroll, within three weeks after each pay date which shall exhibit for each employee paid any wages, his name, current address, social security number, number of hours worked during each day of the pay period and the total for each week, his hourly rate of pay, his job classification, fringe payments, and deductions from his 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 rates shown are not less than those required by the contract.

PROPOSAL BOND

"KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____ as principal and _____ as sureties, are hereby held and firmly bound unto the Perry County Commissioners, Ohio and the Ohio Department of Transportation, as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on _____, **2024**, to undertake the project known as **PER-CR-26-04.20**, the penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate proposals 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. 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 _____, 2023.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal has submitted a bid for **PER-CR-26-04.20**.

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 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 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, than 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 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 _____ shall well and faithfully do and perform the things agreed by the Perry County Commissioners, Ohio 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.

That said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any way affect the obligations of said surety on its bond.

That said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any way affect the obligations of said surety on its bond.

_____	_____
By: _____	By: _____
Principal	Surety

_____	_____
-------	-------

SEAL

EXPERIENCE STATEMENT

The Bidder is required to state in detail in the space provided below, what work he has done of a character similar to that included in the proposed Contract, to give references and such other detailed information as will enable the Owner to judge of his responsibility, experience, skill and financial standing. Among other things, this statement shall include the following:

A record of similar work performed and evidence to the effect:

- 1) that the Bidder maintains a permanent place of business;
- 2) has adequate facilities and equipment available for the work under the proposed Contract;
- 3) that the Bidder has suitable financial means to meet obligations incidental to the work;
- 4) that the Bidder has appropriate technical experience and possesses sufficient skill and experience.
- 5) that the Bidder maintains a service department qualified to make all repairs or adjustments that may be required on the equipment to be used under the proposed Contract.

TIME OF COMPLETION

The Bidder hereby certifies that he has examined the contract form and specifications for the project and is familiar with the liquidated damage features thereof and agrees to accomplish the specified work as follows: **All work shall be completed within 120 days from road closure and in place no later than June 30, 2025.**

The work covered by this completion guarantee shall include only those items listed for comparison of bids.

The prices for all items shall include the necessary labor, material, and equipment to complete the work as shown or specified.

And we (or I) do hereby agree that in the event of failure on our part to contract as aforesaid (provided this proposal is accepted) the bond or certified check accompanying this proposal shall be forfeited to the Perry County Commissioners, Ohio, as liquidated damages.

And we (or I) further agree that the Owner may reject any or all bids.

Signed

Title

Company Name

Address

STATE OF OHIO)
)
COUNTY OF _____)

AFFIDAVIT

_____, being first duly sworn, deposes and says as follows:

1. He/she is the _____ of _____ which may receive a contract with the Perry County Commissioners for **PER-CR-26-04.20**, which contract was competitively bid.

● 2. _____ was not charged at the time the bid was submitted with any delinquent personal property taxes on the general tax list of personal property in Perry County.

or

● 2. _____ was charged at the time the bid was submitted with delinquent personal property taxes on the general tax list of personal property in Perry County in the amount of \$_____ for due and unpaid delinquent taxes and \$_____ for due and unpaid penalties and interest thereon.

3. _____ understands and agrees that, as required by Section 5719.042 of the Ohio Revised Code, if this statement indicates that this contractor is charged with any delinquent personal property taxes, the Perry County Commissioners will transmit a copy of this statement to the County Treasurer, and that a copy of this statement will also be incorporated into the contract, and no payment shall be made with respect to any contract unless this statement has been so incorporated as a part thereof.

SWORN TO before me and subscribed in my presence this ____ day of _____, 2024

Notary Public

My Commission Expires: _____

****SAMPLE CONTRACT****

OFFICE OF
BOARD OF COMMISSIONERS
PERRY COUNTY, OHIO

CONTRACT

This Agreement made the _____ day of _____, 20____, by and between _____, hereinafter called the "Contractor" and **The Board of Perry County Commissioners, Perry County, Ohio**, hereinafter called the "Owner".

WITNESSETH, that the Contractor and the Owner for the considerations stated herein mutually agree as follows:

Article 1 **Statement of Work**

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services, and perform and complete all work required for the construction of the improvements embraced in the project; namely, _____, all in strict accordance with the contract documents, as caused to be prepared by the Owner.

Article 2 **The Contract Price**

The Owner will pay the Contractor for the performance of the work the sum of _____, subject to additions or deductions as provided elsewhere in the contract documents or by change order.

Article 3 **Contract**

The executed contract documents shall consist of the following:

A. This Agreement

B. All documents of the Bid Document, **PER-CR-26-04.20**, bridge replacement over Little Rush Creek, Rush Creek Road, PID 108771, dated <Date>, including:

C. Performance Bond

This Agreement, together with other documents enumerated in this Article 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision of any other component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this Article 3 shall govern except as otherwise specifically stated.

Article 4 **Nondiscrimination**

The Contractor agrees, in accordance with Section 153.59 of the O.R.C., that in the hiring of employees for the performance of work under this contract, or any subcontract, no contractor nor subcontractor or any person acting on his behalf shall, by reason of race, creed or color, discriminate against any citizen of the State in the employment of laborers or workers who are qualified and available to perform the work to which the employment relates; and that no contractor, subcontractor or any person acting on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, or color.

Article 5

Prevailing Wages

The Contractor agrees that the provisions of the Davis-Bacon Act as amended, and related statutes, shall be complied with in all respects under this agreement by the Contractor and all subcontractors.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in two original copies on the day and year above written.

CONTRACTOR:

OWNER:

Board of County Commissioners
Perry County, Ohio

By: _____
(Name)

(Title)

FISCAL OFFICER'S CERTIFICATE

I hereby certify that the amount required to meet the obligation in the foregoing contract has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of Fund _____ free of any previous encumbrances.

Perry County Auditor

Date

CERTIFICATE OF OWNER'S ATTORNEY

The undersigned finds the attached contract to be in accordance with sections 153.01 – 153.60, inclusive, of the Revised Code.

PERRY COUNTY PROSECUTING ATTORNEY

By _____ Assistant

Date _____

GENERAL SPECIFICATIONS

CONTRACT DRAWINGS. The locations and character of the work is shown on drawings prepared for the Perry County Engineer, New Lexington, Ohio.

ORDER OF WORK. The general order and sequence of construction of the work shall be subject to the approval of the Engineer. Before starting work, the contractor shall submit a work schedule to the Engineer and receive approval of the same.

SANITARY REGULATIONS. Suitable sanitary conveniences for the use of all persons employed on the work, properly screened from public observation, shall be provided and maintained by the contractor. The contractor shall obey and enforce such other sanitary regulations and orders and shall take such precautions against infectious diseases as may be deemed necessary by the Engineer.

MAINTENANCE OF TRAFFIC AND FIRE PROTECTION. The contractor shall at all times maintain free access to fire hydrants, water and gas valves and similar structures involving the public safety along the line of work. Clear way for traffic shall be provided at intersections, along the streets and wherever required by the Engineer to provide reasonable public safety measures.

Reasonable provision for pedestrian traffic shall be provided as directed.

SPACE AVAILABLE FOR CONSTRUCTION OPERATIONS. The contractor shall confine his operations to the owners property and to property along right-of-way in accordance with the provisions of rights-of-way agreements which the owner has obtained or may obtain for the work contemplated. Private property shall not be used by the contractor without the owner's consent.

SHEETING AND SHORING. It is the contractor's responsibility to furnish, install and maintain sheeting, piling, shoring, and bracing, whether or not indicated on the Drawings, to prevent earth movement which could damage the construction, or otherwise impair or delay the work or endanger human life. Remove the sheeting, shoring and bracing during backfilling unless otherwise noted on the Drawings or directed in writing. Payment for such sheeting or piling shall be made under the respective Item. All sheeting or piling left in place shall be cut off at least two feet below final finish grade.

WATERTIGHT STRUCTURES. All structures to be used for holding water shall be made watertight and shall be tested by filling with water before they will be accepted. Tests of concrete waterbearing basins shall be made before backfill is placed provided, however, that where special reasons make this impracticable, the Engineer may permit backfilling to proceed before test is made. Permission to make backfill shall not relieve the contractor from any responsibility for watertightness of the structure and if upon making the tests the need to remove backfill arises it shall be done by and at the expense of the contractor.

Structures required to withstand water pressure from outside shall also be tested as above where practicable.

DISINFECTION. Pipe lines, reservoirs, clear water basins and all structures designed to carry or hold water that is ready for domestic consumption shall be thoroughly cleaned and flushed and disinfected before being put in service and before acceptance by the owner. Disinfection shall be done by the addition of suitable amounts of chlorine in the form of liquid chlorine or high test hypochloride of lime, the application to be made under the supervision of the Engineer. Tests for efficiency of disinfection may be made by the owner and repeated disinfection shall be done by the contractor when required.

APPROVAL OF MACHINERY AND EQUIPMENT. The contractor shall submit to the Engineer for approval such detail drawings, sketches, specifications and descriptions as may be required to establish that each and every piece of machinery and/or equipment proposed by the contractor for incorporation in the completed work fully conforms to the requirements of the plans and specifications as set forth herein. The approval of the Engineer of all machinery and/or equipment proposed for installation in the completed work shall be obtained by the contractor before shipment of the same is made to the job. Prior to placing orders with manufacturers for equipment to be incorporated in the completed work, the contractor shall submit to the Engineer for his preliminary approval as to type, data showing name of manufacturer, catalogue number or equivalent designation, and general description of the equipment offered.

These specifications and the plans prepared for the installation of this system are intended to be complete. Anything called for in the specifications and not shown on the plans must be furnished by the contractor as though appearing in both plans and specifications.

CONSTRUCTION REGULATIONS

The following rules and regulations shall apply to all work to be done under this contract

1. CONTRACT SECURITY. The contractor shall furnish a surety bond (form attached) in the amount at least equal to 100% of the contract price as security for the faithful performance of this contract and for the payment of all persons performing labor and furnishing materials in connection with this contract.

2. CONTRACTOR'S INSURANCE. The contractor shall comply with Section 107.12 of the Ohio Department of Transportation 2019 Construction and Materials Manual.

(A) Compensation Insurance. The contractor shall take out and maintain during the life of this contract, workman's compensation insurance for all of his employees employed at the site of the project and, in case any work is sublet, the contractor shall require the subcontractor similarly to provide workmen's compensation insurance for all of the latter's employees unless such employees are covered by the protection afforded by the contractor.

(B) Contractor's Liability Insurance. The contractor agrees to maintain comprehensive general liability and automobile liability insurance covering all operations directly or indirectly incident to work under this contract whether such operations be by himself to the work under this contract whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either or them. Such insurance coverage shall be maintained in the types and amounts herein specified for all work sublet, either by furnishing endorsements of his own liability insurance coverage or by requiring the subcontractors concerned to furnish their own liability insurance of the types and in the amounts herein specified. Such comprehensive general liability insurance shall include coverage for:

- (1) Claims arising after the contractor and subcontractors have completed work (completed operations and products liability coverage), and
- (2) Claims for property damage arising from excavation or tunneling operations, and
- (3) Claims for property damage to any property below the surface of the ground, and
- (4) Claims arising from the liability assumed by the contractor under this contract including third party beneficiary liability coverage.

When the work contemplated by the contract involves moving, shoring, underpinning, raising or demolition of any building or structures or involves blasting or the use of explosives the following coverage shall also be provided.

- (5) Claims for property damage arising from operations directly or indirectly incident to moving, shoring, underpinning, raising or demolition of any building or structure, and

(6) Claims for property damage arising from operations directly or indirectly incident to blasting or explosions, however caused, and

The limits of liability of the insurance required herein shall be not less than \$500,000 each person and \$1,000,000 each occurrence for bodily injury and \$500,000 each occurrence for property damage. Umbrella excess liability insurance to extend existing policies to the limits shown will be accepted.

Such insurance policy(ies) as contractor may carry to comply with this insurance requirement shall be endorsed to provide that the policy(ies) will not be changed or canceled without thirty (30) days prior written notice to the owner. Prior to the start of construction on each contract or sub-contract, certificates of insurance establishing full compliance with these insurance requirements shall be submitted to the owner. If any part of this contract is sublet, the contractor is responsible for obtaining certificates of insurance establishing that the subcontractors have complied with the insurance requirements herein contained. The Perry County Commissioners must be named as additional insured.

3. WAGE RATES. The wages to be paid for a legal days work to laborers, workmen or mechanics engaged in work under this contract at the site of the project in the trade or occupation listed shall be not less than the wage rate set opposite the same, as predetermined by Wage and Hour Division of the U.S. Department of Labor determines prevailing wage rates to be paid on federally funded or assisted construction projects. Davis-Bacon Federal wage rates apply to this federally funded project.

4. POSTING MINIMUM WAGE RATES. The contractor shall post at conspicuous points on the site of the project a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

5. ACCIDENT PREVENTION. The contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

The contractor shall take all necessary precautions for safety of, and shall provide all necessary protection to prevent damage, injury or loss to:

(A) All employees on the work and all other persons who may be affected thereby.

(B) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, and

(C) Other property, at the site or adjacent thereto, including trees, shrubs, lawns, walk pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

The contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and

progress of the work, all necessary safeguards from safety and protection, including posting danger signs, and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. Machinery, equipment, and all hazards shall be guarded or eliminated in accordance with the safety provisions of the manual of accident prevention in construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the work, the contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

6. CONSTRUCTION REPORTS. The contractor shall submit to the owner schedules of costs and quantities of materials and other items, which schedules shall be in such form and shall be supported as to correctness by such of the estimates upon which they are based as the owner may require. The contractor shall also submit to the owner the following records:

(A) Detailed estimate, and

(B) Periodical estimates for partial payment

7. PROGRESS REPORTS. The contractor shall submit a progress schedule prior to the execution of the contract which will indicate the amount of work to be done each month during the life of the construction project. It is understood that this schedule may be changed during the course of the work as agreed between the owner, contractor and Engineer. The contractor will at least once a month submit a schedule indicating the work accomplished to date. This information will be submitted in such a manner that it can be applied to the progress schedule previously submitted to indicate the relation between the work accomplished to any given date and the progress schedule originally established. Providing the work is behind schedule, the contractor shall indicate the measure instigated to bring the job to schedule.

GENERAL CLAUSES

1. TIME OF COMMENCEMENT, RATE OF PROGRESS, AND TIME OF COMPLETION

The contractor agrees that he will commence the work herein contracted to be done within ten days from the date of notice to that effect given in writing by the owner; that the rate of progress of his work shall be such as, in the opinion of the Engineer, is necessary for completion within the time herein specified.

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

The owner has obtained or is in the process of obtaining the rights-of-way where necessary for the construction of the work under this contract. It shall be the responsibility of each bidder and contractor to learn, prior to bidding, the status of acquisition of any rights-of-way necessary for the prosecution of the work and to keep informed on the progress made by the owner in obtaining the rights-of-way during construction. In the event, rights-of-way are not ready by the time the contractor is ready to start work in any particular location, it is understood that the contractor will not be entitled to any extra compensation because of the delay in carrying out the work. The contractor will, however, be entitled to an extension of the specified time he is delayed as a result of the delay in obtaining the rights-of-way.

2. **WORKERS.** Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him. The owner, or the Engineer shall have the authority to order the dismissal of any employee on the work who refuses or neglects to obey any of its instructions, or those of its inspectors relating to the carrying out of the provisions and intent of these specifications, or who is incompetent, unfaithful, abusive, threatening or disorderly in his conduct and such person shall not be again employed on the work.

3. **SUITABLE APPLIANCES TO BE USED.** The contractor is to use such methods and appliances for the performance of all the operations connected with the work embraced under this contract as will secure satisfactory quality of work and a rate of progress which, in the opinion of the Engineer, will secure the completion of the work within the time herein specified. If, at any time before the commencement, or during the progress of the work, such methods or appliances appear to the Engineer to be inefficient or inappropriate for securing the quality of the work required or the said rate of progress, he may order the contractor to increase their efficiency or improve their character, and the contractor must conform to such order. But the failure of the Engineer to demand such increase of efficiency or improvement shall not relieve the contractor from his obligations to secure the quality of work and the rate of progress established in these specifications.

4. **UTILITIES AND STRUCTURES SHOWN ON THE PLANS.** The location of utilities and structures, both surface and subsurface, are shown on the plans from data available at time of survey and is not necessarily complete or correct. The exact location and protection of utilities and structures is the responsibility of the contractor. During construction, the contractor shall

use due diligence in protecting from damage all existing utilities and structures whether shown on the plans or not. If damage is caused, the contractor shall be responsible for the repair or restoration of same to the satisfaction of the Engineer and for any resulting contingent damage.

5. PROTECTION OF FINISHED WORK. The contractor will be held responsible for any and all materials or work to the full amount of payments made thereon, and will be required to make good, at his own cost, any injury or damage which said materials or work may sustain from any source or cause whatever, before final acceptance thereof. During freezing or severe winter weather, the contractor shall provide the necessary drainage, heating facilities and other protection for the footers and floor slab to prevent any possible damage from frost action. It will also be necessary for the contractor to provide protection to the walls from earth slippage and ponding of water and mud that could cause structural damage by freezing action.

6. PROTECTION OF PROPERTY AND LIVES. Said contractor further agrees that he will indemnify, defend and save harmless said owner and its officials, employees, agents and servants, including engineers and consultants employed under contract with the owner to perform services on the projects covered by this contract, from all claims, suits, actions and proceedings of every name and description, which may be brought against said owner, or its officials, employees, agents and servants, or said engineers and consultants, for or on account of any injuries or damages to persons or property received or sustained by any person or persons, firm or corporation, by or from said contractor, or by or in consequence of any materials, or explosives used on said work, or by or on account of any improper material or workmanship in its construction or by or on account of any accident, or of any other act or omission of said contractor or his agents, or servants, and said contractor also agrees that so much of the money due, or to become due, to him under this contract, as shall be considered necessary by said owner may be retained by said owner until such suits or claims for damages, or otherwise, as aforesaid, shall have been finally settled and determined and evidence to that effect furnished to the satisfaction of said owner.

7. PROTECTION AGAINST CLAIMS FOR THE USE OF PATENTS. All fees for any patented invention article or arrangements that may be used upon or in any manner connected with the construction, erection or maintenance of the work, or any part thereof, embraced in these specifications, shall be included in the price mentioned in the contract, and the contractor shall protect and hold harmless the owner against any and all demands for such fees or claims, and before the final payment or settlement is made on account of the contract, the contractor shall furnish acceptable proof of a proper and satisfactory release from all such claims.

8. ASSIGNMENT OF THE CONTRACT AND SUBCONTRACTING. Said contractor further agrees that he will not assign this contract or any part thereof or any of the money or orders payable under the contract without the previous written consent of said owner and of contractor's sureties endorsed on this contract but will keep the same under his personal control; that no right under this contract, nor to any moneys or orders due or to become due thereunder, shall be asserted against said owner or any department, officer, or officers thereof, by reason of any so-called assignment, in law or equity, of this contract, or any part thereof, or of any moneys or orders payable thereunder unless such assignment shall have been authorized by the written consent of said owner and contractor's sureties endorsed on this contract; that no person other

than said contractor now has any claim thereunder, and that no claim shall be made excepting under this specific clause of this contract, and under that clause relating to claim or workmen and materialmen.

9. CONTRACTOR NOT RELEASED BY SUBCONTRACTORS. No subcontract shall under any circumstances relieve the contractor of his liabilities and obligations under this contract; should any subcontractor fail to perform the work undertaken by him in a satisfactory manner, and should this provision be violated, the owner may, at his option, end and terminate such contract. The subcontractor shall be governed by all requirements governing the general contractor.

10. TERMINATION FOR BREACH. In the event that any of the provisions of this contract are violated by the contractor or by any of his subcontractors, the owner may serve written notice upon the contractor and the surety of its intention to terminate such contract, such notices to contain the reasons for such intention to terminate the contract and unless within 10 days after the serving of such notice upon the contractor, such violation shall cease and satisfactory arrangement for correction be made, the contract shall, upon the expiration of said 10 days, cease and terminate. In the event of any such termination, the owner shall immediately serve notice thereof upon the surety who shall have the right to take over and perform the contract, provided however that if the surety does not commence performance thereof within 30 days from the date of the mailing to such surety of notice of termination, the owner may take over the work and prosecute the same to completion by contract for the account and at the expense of the contractor, and the contractor and his surety shall be liable to the owner for any excess cost occasioned by the owner hereby, and in such event the owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

11. CLEANING UP AFTER THE COMPLETION. When the work is completed, all pits, pipes, chambers, conduit, etc. shall be carefully cleaned out. The surrounding ground shall be cleared of all rubbish caused by construction; all sheds, etc., removed and the works left in a neat and presentable condition.

12. REMOVAL OF CONDEMNED MATERIAL. Defective work, materials, and equipment may be condemned by the Engineer at any time before the final acceptance of the work, and when such work has been condemned, it shall be immediately taken down by the contractor and rebuilt in accordance with the plans and specifications. When defective material or equipment has been condemned, it shall be at once removed from the line of the work and stored as directed by the Engineer, or otherwise disposed of to his satisfaction. In case the contractor shall neglect or refuse to remove or replace any rejected work, materials or equipment after a written notice, within the time designated by the Engineer, such work or material shall be removed or replaced by the owner at the contractor's expense.

13. RELATIONS TO OTHER CONTRACTORS. The contractor is required so far as possible to so arrange his work and to dispose of his materials as will not interfere with the work or storage of materials of other contractors engaged upon the work. He is also required to join his work to that of others in a proper manner, and in accordance with the spirit of the plans and

specifications, and to perform his work in the proper sequence in relation to that of other contractors, and as may be directed by the Engineer.

14. CONTRACTOR TO KEEP SUPERINTENDENT AND ALSO COPY OF PLANS AND SPECIFICATIONS ON PROJECT. The contractor shall keep on his work during its progress a competent superintendent and any necessary assistants, all satisfactory to the Engineer. The Superintendent shall represent the contractor in his absence and all directions given to him shall be as binding as if given to the contractor. Important instructions shall be confirmed upon written request in each case.

At all times when work is in progress, there shall be maintained on the site of the work, copies of plans and specifications, all in good order.

15. FAULTS TO BE CORRECT AT ANY TIME BEFORE FINAL ACCEPTANCE. Failure or neglect on the part of the Engineer or any of his authorized agents to condemn or reject bad or inferior work or materials, shall not be construed to imply an acceptance of such work or materials, if it becomes evident at any time prior to the final acceptance of the work and release of the contractor by the owner, neither shall it be construed as barring the owner at any subsequent time from the recovery of damages or of such a sum of money as may be needed to build anew all portions of the work in which fraud was practiced or improper material hidden, whenever found.

16. CONTRACTORS RESPONSIBILITY IN LAYOUT, LOCATION, INSPECTION AND TESTING. The contractor is also responsible for and shall check all leading dimensions and clearances as a whole and in detail, the fittings of all details, the exact proper position and elevation of all parts of the work and shall accomplish all field staking as may be necessary or required for construction. The contractor must provide and maintain such facilities for the Engineer or his assistants as may be required for the convenient examination and inspection of the work in progress. The contractor will pay the cost of testing all materials in laboratories or shops as he may be required by the contract to perform. The testing laboratory or shop shall be approved by the Engineer.

17. AUTHORITY OF ENGINEER. The contractor agrees that the Engineer shall decide any and all questions of fact which may arise under this contract, including the quantity, quality or acceptability of materials and equipment furnished and work performed and rate of progress of the work, whether or not such questions involve the interpretation of the plans and specifications. The Engineer shall have the right to correct any errors or omissions therein, when such corrections are necessary to the proper fulfillment of the intention of said plans and specifications. The Engineer's decision regarding any question governed by this provision shall be final and conclusive.

18. DISPUTES. Except as otherwise provided herein, any dispute arising under this contract shall be settled, if possible, by negotiation and mutual agreement of the parties hereto. In the event of their inability to agree, the Engineer shall reduce his findings to writing and mail or otherwise furnish a copy thereof to the contractor. Within 10 days from the date of receipt of

such copy, the contractor may appeal by mailing or otherwise furnishing to the owner, a written request to submit the dispute to the arbitration of two persons, one to be appointed by each party to this agreement. If the two persons so appointed are unable to agree within a period of 10 days, then such two arbitrators shall appoint a third arbitrator. Thereafter, the three arbitrators shall decide the arbitration as soon as possible. An award, in writing, signed either by the first two arbitrators appointed, or by two of the three arbitrators, if there are three, shall be final and conclusive as to both parties hereto. Neither party hereto shall have recourse to any court of law or equity as to any disagreement or difference which is subject to arbitration under this clause, except in the event the award of the arbitrators shall call for an expenditure by either party of an amount in excess of \$2,000.00 or one percent of the original contract award price (amount of the contract), whichever is greater, or except for the purpose of confirmation, vacating, or modifying, or correcting the award of the arbitrators, on the grounds, for the causes and under the provisions of the Ohio Arbitration Act, R.C. 2711.01 et. seq. If no such appeal to arbitration is taken, the decision of the owner's engineer shall be final and conclusive. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the Engineer's decision.

19. CHANGES AND EXTRA WORK.

INCREASED OR DECREASED QUANTITIES. The owner may be written a change order to the contractor, make alterations in the plans involving increases or decreases in the quantity of work as may be necessary or desirable. Such alterations shall not be considered as a waiver of any of the conditions of the contract, nor invalidate any of the provisions thereof.

EXTRA WORK. Extra work is authorized new work made necessary by alteration of the plans or found necessary by the Engineer during construction and is limited to work other than that required to complete the improvement as detailed on the plans or specified in the specifications. Extra work shall be performed by the contractor in accordance with the specifications where applicable and work not covered by the specifications shall be done in accordance with the best practice as approved by the Engineer provided, however, that before any extra work is started a written change order, from the owner, shall be delivered to the contractor to do the work. When the nature of the extra work required is such that the exact

amount of work to be done cannot be determined precisely, the contractor shall proceed only as directed by the owner.

PAYMENT AND COMPENSATION FOR ALTERED QUANTITIES OF EXTRA WORK. When the owner orders alterations in the plans or quantities or work for which unit prices are provided in the proposal, the contractor shall accept payment in full at the contract unit prices bid for the actual quantities of work done and no allowance will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the contractor resulting either directly from such alterations, or indirectly from unbalanced allocation among the contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefore, or for any other cause.

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. The value of the work not covered by the contract unit bid prices shall be determined in one or more of the following ways:

- (A) By estimate and agreement in a lump sum.
- (B) By unit prices agreed upon.
- (C) By actual cost plus an agreed percentage.

The contractor shall furnish substantiating data required in the preparation of all change orders for extra work items involving lump sum or new unit prices.

In the event an agreement as to the value of the work cannot be reached, the owner reserves the right to have such extra work done by any other person, firm or corporation and that said contractor further agrees that he will not, in any way, interfere with or molest such person, firm or corporation in the execution of the work.

EXTENSION OF TIME. Alterations or extra work authorized as provided herein-before which results in delays beyond the control of the contractor or which materially increases the scope or intent of the project, shall entitle the contractor to such extension of time as may be mutually agreed upon.

20. DEFINITIONS. Whenever the word "Engineer" is used herein, it shall be and is mutually understood to refer to the County Engineer.

Whenever the word "Owner" is used herein, it shall be understood to refer to the Perry County Commissioners.

21. THE CONTRACT. It is mutually understood that the contract is the written agreement covering the performance of the work and the furnishing of labor and materials in the construction of the work. The contract includes the advertisement, the information to bidder, the proposal, all drawings, maps and plans hereto attached or herein described, the specifications, the contract bond, and any and all extra work contracts or other supplemental agreements.

22. DAMAGES BY FAILURE TO COMPLETE THE WORK WITHIN THE TIME AGREED UPON, OR AS EXTENDED. The contractor hereby agrees that the said owner shall be and are hereby authorized to deduct and retain out of the moneys which may be due or become due to the said contractor, under this agreement, as damages for the non completion of the work aforesaid within the time hereinbefore stipulated for its completion or within such further time as in accordance with the provision of this agreement shall be fixed or allowed for such performances or completion, the sum of \$300 per day for contract amounts from \$0 to \$200,000, and \$600 per day for all contracts over \$200,000 for each and every day the time employed upon said work may exceed the time stipulated for its completion, or such stipulated time as the same may be increased, as hereinbefore provided, which said sum of \$300 per day for contract amounts from \$0 to \$200,000 and \$600 per day for all contracts over \$200,000 is hereby, in view of the difficulty of estimating such damages, agreed upon, fixed and determined by the parties hereto as

the liquidated damages that the owner will suffer by reason of such default and not by way of penalty.

23. OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS. Upon non-payment by the contractor for a period of ten (10) days after due date of just claim for labor done under this contract or upon non-payment by the contractor for a period of thirty (30) days after due date of just claims for material furnished under this contract, the owner may retain from

subsequent estimate due the contractor such amount as the owner deems necessary in order to pay such just overdue claims.

24. PROVISIONS OF LAW. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and this contract shall be read and enforced as though it were included herein and if through mere mistakes or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party hereto, the contract shall forthwith be physically amended to make such insertion.

25. QUALITY OF MATERIALS. Wherever in the contract documents a particular brand, make of material, device or equipment is shown or specified, such brand, make of materials, device or equipment is to be regarded merely as a standard meeting specifications and such trade name shall be considered to be followed by the clause "or equal". If two or more brands, makes of material, devices or equipment are shown or specified, each is to be regarded as the equal of the owner. Any other brand, make of material, device or equipment which, in the opinion of the Engineer, is recognized equal of that specified, considering quality workmanship, economy of maintenance and operation, availability of repair work, duration of life, and is suitable for the purpose intended will be accepted. In those instances in which a particular brand, make of material, device or equipment is required to be stated by the contractor in the bidding form, contractor is required to provide the item so indicated unless otherwise approved by the Engineer by written change order. All material and workmanship shall in every respect be in accordance with what, in the opinion of said Engineer, is the best modern practice, and wherever the plan, drawings, specifications or other contract documents, or the directions of the Engineer admit of doubt as to what is permissible and/or fail to note the quality of any work, that interpretation which requires the best quality of materials and workmanship in conformity with the best modern practice is to be followed.

26. ADEQUATE SURETIES. If, at any time after execution and approval of this contract and the performance bond required by the contract documents, the owner shall deem any of the sureties upon such bond to be unsatisfactory, or if, for any reason, such bond shall cease to be adequate security for the owner, the contractor shall, within five days after notice of the owner so to do, furnish a new or additional bond, in form, sum and signed by such sureties as shall be satisfactory to the owner. No further payment shall be deemed due nor shall any further payment be made to the contractor unless and until such new or additional bond shall be furnished and approved. The premium on such bonds shall be paid by the contractor.

27. NOTICES. Notice shall mean written notice. Written notice shall be deemed to have been duly served when delivered in person to the person, firm, or corporation for whom intended, or

to his or its duly authorized officer, agent or representative, or when delivered at the last known business address of such person, firm or corporation, or when enclosed in a postage prepaid wrapper or envelope addressed to such person, firm or corporation at his, their or its last known business address and sent by registered mail with return receipt requested.

28. MONTHLY ESTIMATES. On the first of each month, or within seven (7) days thereof, during construction, the contractor shall prepare and submit to the Engineer for approval, an estimate of the amount of labor performed and of the amount of materials incorporated in the work and/or acceptable materials delivered to the site.

Partial payment to the contractor for work performed under a lump sum price shall be based on the detailed breakdown of the bid showing labor and material as prepared by the contractor preceding start of construction and approved by the Engineer.

An Act of the 103rd General Assembly of the State of Ohio (Am. Sub. House Bill No. 627) is interpreted as follows:

Acceptable materials delivered to the site but not incorporated in the work will be paid for the ninety-two percent of the invoice value of same. Until the job is fifty percent completed, the contractor will be paid ninety-two percent of the estimated value of labor and material completed in acceptable form. This eight percent retention of the first fifty percent of the job will be held by the owner until 30 days after completion. After the job is fifty percent completed, material incorporated in the work and labor will be paid for at one-hundred percent of the estimated value of same as bid.

When the work is completed to the satisfaction of the Engineer and the owner, the contractor shall be paid an amount which will bring the total payments to him up to ninety-six percent of the contract price.

Estimates and payments shall be made about the first of each month unless, as provided by the act, when the rate of work and amounts involved are so large that it is deemed advisable by the owner or contractor, estimates and payments shall be made twice each month.

The Act makes reference to payments of estimates unless the contractor does not prosecute the work with diligence and with the force specified or intended in the contract.

From the date of satisfactory completion and acceptance of the work, four percent shall be retained as additional security for thirty days for the faithful performance of the contract, after which time, if the contract has been faithfully performed, nothing shall be retained.

29. REPAIRS FOR ONE YEAR. The contractor shall make all repairs due to defective workmanship or materials for the term of one year after the final acceptance date and shall correct and repair promptly during that time all defective work and material or whatever description. However, ordinary wear and tear or damage due to negligent or improper operation or maintenance on the part of the owner shall not be considered any obligation of the contractor. In case the contractor shall neglect or fail to promptly make said repairs, after written

notification, the owner shall cause such repairs to be made at the expense of the contractor and/or his surety.

30. "NON-DISCRIMINATION IN EMPLOYMENT. The contractor agrees that in the hiring of employees for the performance of work under this contract or any subcontract, neither the contractor, nor any subcontractor, nor any person acting on behalf of either, shall, by reason of race, creed, 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; nor shall the contractor, or any subcontractor, or any person acting on behalf of either, in any manner discriminate against or intermediate any employee hired for the performance of work under this contract on account of race, creed or color."

31. The contractor is hereby notified that city income tax must be deducted from all employees on this project and said contractor must abide by all rules of the City Income Tax Department.

32. ASSIGNMENT. The contractor shall not, without the written consent of the Owner, assign, transfer, convey, subcontract or otherwise dispose of or encumber this Contract or any part of his interest herein or in any of the moneys due or to become due and payable hereunder.

Funds payable to an assignee under any approved assignment shall be subject to all set-offs to which the Owner is otherwise entitled and to prior liens for services rendered and materials supplied in favor of all persons, firms or corporations rendering such services or supplying such materials.

In making application for subcontracting any portion of this contract, the contractor shall state in writing to the Owner what such other information as may be required by the Owner, in order to ascertain whether such sub-contractor is responsible and able to perform the work or to furnish the materials as called for in the contract documents. The Owner will consider the contractor's application to subcontract work and advise him by letter of its decision within seven (7) days thereof. Sub-contractors shall be bound to all of the conditions and covenants of the contract, except as may otherwise be agreed by the Owner in granting approval for their use.

The contractor shall not subcontract more than 70% of the General Contract.

33. RESPONSIBILITY OF THE CONTRACTOR: The contractor shall take all responsibility for work performed by them on the project, shall bear all losses resulting to them on account of the amount or character of the work or from any unforeseen obstruction or difficulties which may be encountered, or because the nature of the land in or on which the work is done is different from that which is assumed or was expected, or on account of the weather, floods, or other causes; and the contractor shall assume the defense of and shall indemnify and save harmless the Perry County Commissioners, its officers and agents from all claims of any kind arising from the performance of their work on the project.

PERFORMANCE AND PAYMENT BOND

"KNOW ALL MEN BY THESE PRESENT, that we, the undersigned _____ as principal and _____ as sureties, are hereby and firmly bound unto the Perry County Commissioners, Ohio, and the Ohio Department of Transportation in the penal sum of _____ dollars to perform the project known as **PER-CR-26-04.20**, for the payment of which will and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this ____ day of _____, 2024.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the ____ day of _____, 2024, enter into a contract with the Perry County Commissioners, Ohio, to undertake the project known as **PER-CR-26-04.20**, which said contract is made a part of this bond the same as though set forth herein;

Now, if the said _____ shall well and faithfully do and perform the things agreed by the Perry County Commissioners, Ohio, to be done and performed according to the said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and material furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any 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 stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond.

Principal

Surety

Address

Address

SEAL

Perry County
PER-CR 26-04.20

GENERAL PROVISIONS

1. Traffic control will be provided by the Contractor in compliance with the OMUTCD.
2. Work shall commence after execution of construction contract and will have a window of construction time for closure of 120 days with a completion date of June 30, 2025.
3. The Board of County Commissioners reserves the right to reject any and all bids.
4. The Standard Construction and Materials Specifications for the State of Ohio, Department of Transportation, 2023 edition, including all changes and Supplemental Specifications referenced in this Bid Document shall govern this Contract.
5. Contractors shall be be prequalified for bridge replacement work with the Ohio Department of Transportation prior to submitting bids and remain prequalified through the completion of the project.

**ODOT's LPA Template (ODOT Spec Book and LPA Spec Book)
Required Contract Provisions for STATE-Only Funded Projects**

1. ODOT'S 2023 CONSTRUCTION AND MATERIAL SPECIFICATIONS (C&MS) AND ITS SUPPLEMENTS

ODOT's Construction and Material Specifications (C&MS) and its supplements are hereby incorporated by reference, in their entirety, as if rewritten herein. **The incorporation of this document by reference does not interfere with the order of precedence set forth in Section 105.04 of the C&MS Manual.**

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

2. PN 100 FOR LPA PROJECTS

(PN 100 outlines general provisions to a construction contract. Local public agencies (LPAs) may choose to incorporate this document to include LPA specific preferences.

[2023 PN 100 for LPA Projects](#)

If including PN 100, download the template above. Green sections cannot be edited. Blue sections may be edited by the LPA. Yellow sections must have the LPAs own language incorporated. Once complete, insert the completed document in its entirety here. If not including PN 100, this item must be deleted from the bid doc template.)

3. PREQUALIFICATION

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

4. STEEL PRODUCTS MADE IN THE UNITED STATES

Domestic steel use requirements as specified in section 153.011 of the Ohio Revised Code apply to this project. Copies of section 153.011 of the Ohio Revised Code can be obtained from any of the offices of the Department of Administrative Services.

5. AS PER PLAN DESIGNATION

The "As Per Plan" designation is sometimes added to item descriptions in the proposal to assist contractors with easily identifying standard items that have been altered by plan notes.

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

contractors of the responsibility to read, bid, and construct those particular items in accordance with the governing plan notes.

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

6. PREVAILING WAGES ON STATE PROJECTS WITH NO FEDERAL-AID FUNDING

The following is in addition to C&MS Section 108.10.

This contract is subject to Ohio Prevailing Wage Laws, Chapter 4115 of the Ohio Revised Code. The contractor and all subcontractors shall comply with the provisions contained therein or as otherwise provided by this note. The contractor guarantees the prevailing wage scale to be paid to all laborers and mechanics employed on this contract is in accordance with the schedule of the prevailing hourly wage and fringe benefits as determined by the Ohio Department of Commerce for the county in which the work is being performed. Failure to pay prevailing wages to all laborers and mechanics employed on this project shall be considered a breach of contract. Such a failure may result in the revocation of the contractor's and/or subcontractor's certificate of qualification and debarment. A schedule of the most current prevailing wage rates may be accessed by registering with the Ohio Department of Commerce, Industrial Compliance Division, Bureau of Wage & Hour Administration at the following web address:

<https://wagehour.com.ohio.gov/w3/webwh.nsf/wrAccessLog>

The contractor and all subcontractors shall compensate the employees on this contract at a pay rate not less than the hourly wage and fringe rate listed on the website noted above, for the applicable job classification or as may be modified by the Ohio Department of Commerce, Industrial Compliance Division, Bureau of Wage and Hour Administration, when new prevailing rates are established.

Overtime shall be paid at one and one-half times the base hourly rate for any hours worked beyond forty hours during a pay week. The contractor and all subcontractors shall pay all compensation by company funds transfer or legal tender to the worker and fringe benefit program.

The wage and fringe rates determined for this project, or as may be modified later, shall be posted by the contractor in a prominent and accessible place on the project, field office, or equipment yard where they can be easily read by the workers or be otherwise made available to the workers. On the first pay date of the contract work, the contractor and all subcontractors shall furnish each employee covered by prevailing wage a completed form whpw1512 in accordance with section 4115.05 of the Ohio Revised Code showing the classification, hourly pay rate, fringes, and identifying the LPA Prevailing Wage Coordinator (PWC), if such employees are not covered by a collective bargaining agreement or understanding between employers and bona fide organizations of labor. These forms shall be signed by the contractor or subcontractor and the employee and kept in the contractor's or subcontractor's payroll files.

The contractor and all subcontractors shall submit to the PWC or other designated LPA representative certified payrolls on form whpw1509 or equivalent, in accordance with sections 4115.07 and 4115.071 (C) of the Ohio Revised Code, three weeks after the start of work and every subsequent week until the completion of the contract. Additionally, a copy of the "Apprentice Certification" obtained from the Ohio State Apprenticeship Council, must accompany all certified payrolls submitted for all apprentices working on this project. Upon completion of the contract and before the final payment, the contractor shall submit to the PWC a final wage affidavit in accordance with section 4115.07 of the Ohio Revised Code stating wages have been paid in conformance with the minimum rates set forth in the contract. Please be aware that it is ultimately the responsibility of the contractor to ensure all laws relating to prevailing wages in

Chapter 4115 of the Ohio Revised Code are strictly adhered to by all subcontractors.

The contractor and all subcontractors shall make all payroll records available for inspection, copying, or transcription by any authorized representative of the contracting agency. Additionally, the contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employees are on the job.

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

7. STATE EEO CERTIFICATION CLAUSE

The hiring of employees for the performance of work under this contract shall be done in accordance with Ohio Revised Code sections 153.59 and 153.591, the Governor's Executive Order of January 27, 1972, including Appendices "A" and "B", and the Governor's amended Executive Order 84-9 of November 30, 1984. The successful contractor shall not discriminate against or intimidate any person hired for the performance of the work by reason of race, color, religion, national origin, ancestry, sex, or handicap. For any violation, the contractor shall suffer such penalties as provided for in Ohio Revised Code section 153.60 and the Governor Executive Order of January 27, 1972. The bidder also agrees that upon award of this contract they shall incorporate this certification in all subcontracts on this project regardless of tier.

8. UNRESOLVED FINDING FOR RECOVERY

The contractor affirmatively represents to the LPA that it is not subject to a finding for recovery under Ohio Revised Code section 9.24 or that it has taken the appropriate remedial steps required under section 9.24 or otherwise qualifies under that section. The contractor agrees that if this representation is deemed to be false, the contract shall be void ab initio as between the parties to this contract, and any funds paid by the state hereunder shall be immediately repaid to the LPA or an action for recovery may be immediately commenced by the LPA and/or for recovery of said funds.

9. ASSIGNMENT OF ANTITRUST CLAIMS IN STATE CONTRACT LANGUAGE

The contractor should recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by ODOT and/or the LPA. As consideration for the Award of the Contract and intent to be legally bound, the contractor acting herein by and through the person signing this contract on behalf of the contractor as a duly authorized agent, hereby assigns, sells, conveys, and transfers to ODOT and/or the LPA any and all right, title and interest to any and all claims and causes of action the contractor now has or hereafter requires under state or federal antitrust laws provided that the claims or causes of action related to the goods or services that are the subject to the contract. In addition, the contractor warrants and represents that it will require all of its subcontractors and first tier suppliers to assign all federal and state antitrust claims and causes of action to ODOT and/or the LPA. The provisions of this article shall become effective at the time the LPA executes this contract without further acknowledgment by any of the parties.

All contracting entities shall assign their rights and responsibilities to ODOT and/or the LPA for all antitrust claims and causes of action regarding subcontractors.

10. US ARMY CORPS OF ENGINEERS AND OHIO ENVIRONMENTAL PROTECTION AGENCY PERMITS

The above referenced permits are incorporated and made part of this contract as special provisions incorporated herein. Therefore, in the event the contractor or its agents refuse or fail to adhere to the requirements of the 404 Permit and/or the NPDES Stormwater Permit resulting in an assessment or fine made or levied against ODOT and/or the LPA, the contractor shall reimburse ODOT and/or the LPA within thirty (30) calendar days of the notice of assessment or fine, or the LPA and/or ODOT may withhold the amount of the fine from the contractor's next pay estimate. All money collected or withheld from the contractor shall be delivered to the permitting agencies issuing the assessment or fine.

These fines are not to be construed as a penalty but are liquidated damages to recover costs assessed against the LPA and/or ODOT due to the contractor's refusal or failure to comply with the permits.

11. OHIO WORKERS' COMPENSATION COVERAGE

The contractor must secure and maintain valid Ohio workers' compensation coverage until the project has been finally accepted by ODOT. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the LPA before the contract will be executed by the LPA.

The contractor must immediately notify the LPA in writing if it or any subcontractor fails or refuses to renew their workers' compensation coverage. Furthermore, the contractor must notify the LPA in writing if its or any of its subcontractor's workers' compensation policies are canceled, terminated, or lapse.

The failure to maintain valid workers' compensation coverage shall be considered a breach of contract, which may result in the contractor or subcontractor being removed from the project, withholding of pay estimates, and/or termination of the contract.

12. PN 034 - 05/25/2011 – DRUG FREE SAFETY PROGRAM

During the life of this project, the contractor and all its subcontractors who provide labor on the project site must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation (OBWC) Drug-Free Safety Program (DFSP) or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable Drug Free Workplace Program (DFWP) approved by the OBWC, the department requires each contractor and subcontractor that provides labor to subject its employees who perform labor on the project site to random drug testing of five (5) percent of its employees. The random drug testing percentage must also include the on-site supervisors of the contractors and subcontractors. Upon request, the contractor and subcontractor shall provide evidence of required testing to the department.

Each subcontractor shall require all lower-tier subcontractors who provide labor on the project site with whom the subcontractor is in contract for the work to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to a lower-tier subcontractor providing labor at the site.

The department will declare a bid non-responsive and ineligible for award if the contractor is not enrolled in and in good standing in the OBWC's DFSP Discount Program or a similar program approved by the OBWC within eight (8) days of the bid opening. Furthermore, the department will deny all requests to sublet when the subcontractor does not comply with the provisions of this proposal note.

Failure of the contractor to require a subcontractor to be enrolled in and be in good standing in the OBWC DFSP or an OBWC-approved DFWP prior to the time the subcontractor provides labor at the site shall result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the State for five (5) years after the date of the breach.

13. WAIVER OF C&MS 614.03

ODOT's 2023 Construction and Material Specifications section 614.03, third paragraph, does not apply to any project which is not physically located on the National Highway System (NHS) and/or does not impact NHS traffic in any way.

14. ODOT AS OBLIGEE ON BOND

The contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of the estimate as security for the faithful performance of its contract. In addition to the project owner, ODOT shall be named as an obligee.

15. PN 032 – 01/31/2021 – C92s REQUIRED ON LOCAL-LET CONSTRUCTION PROJECTS

State and federal law requires all contractors and subcontractors participating in state or federally funded projects to be evidenced in writing and in conformity with all applicable state and federal laws and regulations.

Effective immediately, all projects advertising after 2/1/2021 will require a Request to Sublet (C92) form be completed for each subcontractor working on the project prior to the start of work. This will include all EDGE and non-EDGE material suppliers utilized on the project.

A template for this form may be found and submitted via the GoFormz website located at <https://www.goformz.com/>.

16. PN 031 – 6/27/2023 – PROMPT PAYMENT - LOCAL-LET CONSTRUCTION PROJECTS

ODOT, along with the LPA, shall monitor payments made by the prime contractor and subcontractors for compliance with this Proposal Note and C&MS 107.21. To facilitate this monitoring, the Department requires both prime and subcontractors to report their payments to all subcontractors/second-tier subcontractors with the submission of each invoice. The payment data reported must include any retainage withheld (when allowable under the department's [Retainage Policy dated 4/14/21](#)) and any previously withheld retainage released. All such reporting must take place through a web-based submission on GoFormz. Please note: submission through GoFormz is required for all Local-let projects. Invoices will not be approved and processed for payment unless this reporting form has been submitted and received by the department.

Second-tier subcontract means a subcontract awarded directly by the subcontractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

The prime/subcontractor must report the following information:

- The name of the payee;
- The dollar amount of the payment to the payee;
- The date the payee was paid;
- The amount of retainage withheld (if any).

Ohio's 10-day prompt payment requirement is based on the payer's payment issuance date and NOT the payee's payment receipt date.

The prime/subcontractor(s) must sign each reported payment and submit to ODOT via the GoFormz website.

The second-tier subcontractor is responsible for completing the affirmation of payment form in GoFormz.

The prime contractor is responsible for ensuring that all subcontractors and second-tier subcontractors are correctly completing all prompt payment forms via the GoFormz website.

If the prime or subcontractor(s) fail to submit the aforementioned documentation with each invoice, they will be determined to be non-compliant and invoices will not be processed for payment.

Payee must verify each payment reported by the payer within thirty (30) days of the payment being signed by the payer. This verification must include:

- Whether the payment was received, and if so, whether it was or was not as expected
- The dollar amount of the payment received
- The date the payment was received

The prime contractor shall fully complete the last prompt payment form upon receipt of final payment.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the prime contractor and/or subcontractor(s) to follow Prompt Payment requirements may result in the issuance of sanctions as follows:

1st Tier: Notice of Violation via a Letter of Reprimand

2nd Tier: If corrective actions are not taken within the specified three (3) business days, a pay estimate in the amount due to the subcontractor(s) that was not reported or paid may be withheld.

3rd Tier: If a pattern of paying damages persists or the contractor or subcontractor(s) has falsified, misrepresented, or withheld information, ODOT will pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the magnitude and type of offense
- the degree of the contractor's or subcontractor's culpability
- any steps taken to rectify
- the contractor's or subcontractor's record of performance on other projects
- the number of times the contractor or subcontractor has been previously sanctioned by ODOT

17. PN 022 – 04/15/2013 - ENCOURAGING DIVERSITY, GROWTH, AND EQUITY (EDGE) REQUIREMENTS

Pursuant to Ohio Revised Code 122.922, amended 9/30/2021, guiding EDGE program requirements, the percentage indicated on the front cover of this bid is the percent of the awarded contractor's bid. The percentage goal may be met if the contractor is EDGE certified or by subcontracting to certified EDGE firms. EDGE certified firms are those who have been certified by the Ohio Department of Development. If not EDGE certified, the contractor must use its best effort to solicit quotes from and to utilize EDGE subcontractors/suppliers on this project.

WAIVER PROCESS FOR EDGE GOAL

If not EDGE certified, the contractor must document the progress and efforts made to secure the services of EDGE certified subcontractors/suppliers. In the event the contractor is unable to meet the EDGE goal placed on this project, a request for a waiver of all or part of the goal may be made to the Division of Opportunity, Diversity and Inclusion (ODI). The written request must include all signed and dated purchase orders and subcontract agreements for any goal attainment achieved as well as indicate a good faith effort was made to meet the goal. The request must be sent to the Division of Opportunity, Diversity and Inclusion, Mail Stop #3270, 1980 West Broad Street, Columbus, Ohio, 43223. There will be no extension of time for the project granted if the contractor wishes to avail itself of this process. If an item of work subcontracted to an EDGE firm is non-performed by the department or is the subject of an approved VECP, the contractor may request a waiver for the portion of work excluded.

The department shall consider the following information and documentation when a request for an EDGE goal waiver is received:

- Dollar value and % of EDGE goal. Dollar value and % of waiver request.
- Signed copy of each subcontract or purchase order agreement between the contractor and EDGE subcontractor/supplier utilized in meeting the contract goal.
- Copy of dated written communication, fax confirmation, personal contact, follow-up and negotiation with the EDGE subcontractor/supplier.
- Copy of dated written communication and/or fax confirmation that bidder solicited and provided EDGE subcontractor/supplier with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Copy of dated written communication and/or fax confirmation of each noncompetitive EDGE quote that includes the dollar value of each reference item and work type.
- Copy of dated written communication and/or dated fax confirmation of EDGE subcontractor/supplier that were not interested in providing a quote for the project.
- All solicitations made by the contractor for subcontracting opportunities and EDGE quotes through SBN.
- Documentation of all negotiating efforts and reason for rejecting quotes from EDGE subcontractor/supplier.
- Documentation of good faith efforts (GFE) to meet the EDGE subcontract goal by looking beyond the items typically subcontracted or consideration of subcontracting items normally performed by the prime contractor as a way to meet the EDGE goal.

The Administrator will review the submitted documentation and issue a written decision within ten (10) business days. The contractor may request administrative reconsideration within fourteen (14) days of being informed that it did not perform a GFE. The contractor must make this request in writing to the following official:

Ohio Department of Transportation
Attention: Administrator, Division of Opportunity, Diversity, & Inclusion
Mail Stop #3270
1980 West Broad Street
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the contractor did not document sufficient good faith efforts.

As part of this reconsideration, the contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the contractor a written decision on reconsideration explaining the basis for finding that the contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process may be appealed to the Court of Claims.

AFFIDAVIT OF SUBCONTRACTOR PAYMENTS MADE TO EDGE SUBCONTRACTORS/SUPPLIERS

The Ohio Revised Code 122.922 requires ODOT to monitor and verify the work subcontracted to EDGE subcontractors/suppliers is actually performed by the EDGE subcontractor/supplier. The affidavit seeks to verify payments made to EDGE subcontractors/suppliers on the project. Each EDGE subcontractor/supplier must verify the actual payment amount.

The blank spaces in the affidavit must be filled in correctly where indicated. The affidavit must be signed by the contractor and subcontractor or by the subcontractor and EDGE subcontractor/supplier, if applicable. By signing the affidavit, the noted subcontractors/suppliers agree the payment amount recorded is true and accurate as of the payment time period.

Completed and signed affidavits shall be mailed to the Ohio Department of Transportation, Division of Opportunity, Diversity & Inclusion, Mail Stop #3270, 1980 West Broad Street, Columbus, Ohio 43223.

SANCTIONS FOR FAILURE TO MEET EDGE GOAL AND DEMONSTRATE GOOD FAITH EFFORT

ODOT will issue sanctions if the contractor chooses not to request a waiver, fails to comply with the contract requirements, and/or fails to demonstrate the necessary good faith effort.

ODOT may impose any of the following sanctions:

- Letter of Reprimand
- liquidated damages computed up to the amount of goal dollars not met
- cross-withhold from future projects
- contract termination
- other remedies available by law including suspension, revocation, and/or debarment

Factors to be considered in issuing sanctions include, but are not limited to:

- the magnitude and the type of offense
- the degree of the contractor's culpability
- any steps taken to rectify the situation
- the contractor's record of performance on other projects including, but not limited to:
 - annual EDGE participation over EDGE goals;
 - annual EDGE participation on projects without goals;
 - number of complaints ODOT has received from EDGE subcontractors/suppliers regarding the contractor; and
 - number of times the contractor has been previously sanctioned by ODOT
- whether the contractor falsified, misrepresented, or withheld information