

V. GENERAL PROVISIONS

1. GENERAL PROVISIONS (*VARIATIONS AND ADDITIONS TO THE STANDARD SPECIFICATIONS*)

The Construction & Material Specifications of the State of Ohio, Department of Transportation (2013 edition), including but not limited to the terms, conditions, covenants and definitions recited in "General Provisions" [Section 100] thereof, shall govern any contract awarded under these bid instructions. Said Construction & Material Specifications shall be referenced as the "Standard Specifications" or the "C&M Specifications" herein. The specifications, requirements, terms, conditions and covenants of these instructions and of other bid documents shall control over conflicting terms found in the Standard Specifications.

Wherever the following terms appear in the Standard Specifications, said terms shall have the following meaning herein:

- A. The terms "State", "State of Ohio", "Department" or "Department of Transportation" refer to the County of Summit, State of Ohio, acting through its authorized representatives. The County of Summit may be referenced as the "County" or the "Owner" herein.
- B. The term "Director" refers to Alan Brubaker, P.E., P.S., County of Summit Engineer.
- C. The term "Laboratory" refers to such testing laboratory or consultant as shall be designated by Alan Brubaker, P.E., P.S., County of Summit Engineer, or by his duly authorized representative.
- D. The term "Engineer" refers to Alan Brubaker, P.E., P.S., County of Summit Engineer, or to his duly authorized representative.

2. "OR EQUAL"

Whenever, in any of the contract documents, an article, material, or equipment, is defined by describing a proprietary product, or by using the name of manufacturer or vendor, the term "or equal", if not inserted, shall be implied. The specific article, material, or equipment mentioned, shall be understood as indicating the type, function, minimum standard of design, efficiency, and quality desired, and shall not be construed in such a manner as to exclude manufacturer's products of comparable quality, design and efficiency. The Contractor shall comply with the requirements of the contract documents, relative to the approval of materials and equipment by the County, before they are incorporated in the Work.

3. SCOPE OF WORK

The Contractor shall furnish, at his own proper cost and expense, all management, labor, tools, forms, equipment, appliances, machinery, transportation, and materials, of whatever nature, necessary or proper for the Work in hand, and shall perform and complete within the time limit specified, all of the Work indicated or implied by the plans, profiles, drawings, specifications or estimated quantities prepared for this Project, including the removal of surplus or condemned materials, and the thorough cleaning of the site of the Work and structures built.

In no case will any Work, in excess of such requirements, be paid for unless ordered in writing by the Engineer as hereinafter specified.

All Work shall be of the best quality throughout, and shall be so done as to meet the approval of the Engineer.

4. ENGINEER'S DUTIES AND AUTHORITY

The Engineer shall have authority to appoint such assistants and inspectors as may be necessary to represent him in his absence from the Work; they shall keep the Engineer informed as to the progress of the Work, the character of the materials furnished, and the manner in which the Work is being done; they shall call the attention of the Contractor to any infringement upon the plans or specifications; they shall have the authority to reject defective materials, and to suspend any Work which is being improperly done, subject to the final decision of the Engineer. Neither the Engineer, nor his assistants, is authorized to revoke, alter, enlarge or relax the provisions of these specifications.

The Engineer shall, in all cases, determine the amount, quality, acceptability and fitness of the several kinds of Work and materials which are to be paid for under this contract, and shall, in all cases, decide every question which may arise relative to the fulfillment of this contract on the part of the Contractor. In so doing, to prevent disputes and litigation, he shall render fair and impartial decisions, and such decisions shall be binding upon the parties hereto.

The Engineer shall prepare all estimates of materials furnished, and Work done, upon which the Contractor is to be paid, which estimate shall be final and conclusive, except as herein otherwise provided, and such an estimate or estimates shall be a condition precedent to the right of the Contractor to receive any money under this contract.

The Engineer shall make all necessary explanations as to the meaning and intention of the specifications, shall give all orders and directions contemplated therein, or thereby, and in every case in which a difficult or unforeseen condition shall arise in the performance of the Work required by this contract. He shall decide on, and adjust, any differences, or conflicts, which may arise between the Contractor and other contractors or the County Executive.

If, at any time before the commencement of, or during the progress of the Work, the Engineer is of the opinion that the materials, or appliances, used, or to be used, are insufficient for securing the quality of Work required, or the required rate of progress, he may order the Contractor to increase their quantity or efficiency, and improve their character, and the Contractor shall conform to such order; but the failure of the Engineer to give such order shall not be so construed as to release the Contractor from his obligations to secure the quality of Work, or the rate of progress, required.

5. DRAWINGS AND SPECIFICATIONS

The drawings and specifications for this Project are intended to be explanatory and supplementary of each other, and are intended to indicate and provide for the construction of the various related parts of the Project in a complete and connected manner, using only the best materials and workmanship throughout. Should any detail be omitted, any discrepancies or errors appear, or misunderstandings arise, in or with respect to such drawings and

specifications, the additions, corrections, or explanations necessary to provide for the construction in accordance with such intent shall be made by the Engineer, and such additions, corrections and explanations shall be final and binding upon the Contractor, whose obligations hereunder shall require the construction in the manner aforesaid.

6. TIME AND ORDER OF DOING WORK

The word "days" shall mean calendar days unless otherwise specified. The Contractor shall commence Work at such point or points as the Engineer may approve, and shall carry on the various parts of the Work in such order of procedure as the Engineer may approve.

The rate of progress shall be such as to complete the entire Work contemplated within the time limit specified in the proposal. In case the Work is not completed within the time limit aforesaid, the party of the second part shall forfeit to the party of the first part, not as a penalty but as liquidated damages caused by the failure so to complete. An amount of such liquidated damages as determined by Standard Specifications Section 108.07, and such amounts shall be deducted by the Engineer from the partial or final estimates to be allowed the Contractor.

7. EXTENSION OF TIME

The County Executive reserves the right to extend the time of completion for cause to the extent deemed sufficient, but such extension of time shall not be deemed a waiver by said County of any rights provided for under this contract and shall not operate to release any bondsman from any of the obligations under the bond. An extension of time will be made for ordinary delays and accidents incident to construction work of this character.

8. NIGHT AND SUNDAY WORK

No Work requiring the presence of the Engineer or Inspector will be permitted at night or on Sunday. This clause shall not prohibit emergency Work, or Work for which the written permission of the Engineer is obtained, or Work being done by workmen organized for the regular continuous night work and working on only such work as the Engineer believes may be performed satisfactorily at night.

9. EXAMINATION OF WORK

The County, its agents and employees, shall at all times have the right of entrance upon the Work and the premises occupied by the Contractor, and the Contractor shall provide safe and proper facilities for permitting such entrance. Other contractors of the party of the first part, for all purposes required by their contracts, shall have the similar right of entrance. The Engineer shall be furnished with all reasonable facilities for ascertaining that the materials and Work are

in accordance with the requirement and intention of the specifications and contract, even to the extent of uncovering or removing portions of finished Work.

10. INSPECTION

The Engineer, his assistants and agents, shall have, at all times, immediate access to all sources from which materials are being obtained for this contract, and shall have full facilities for inspecting and testing same. The Contractor shall give definite information, at any time, as to the place from which, or persons from whom, any material is being or will be procured. No material of any kind shall be incorporated in any part of the Work under the contract until it has been inspected by the Engineer, or his assistants, and has been approved by them. All materials to be used may be subjected to such tests as the Engineer may require to assure that such materials conform, in all respects, to the requirements of the specifications, or that they are equal in quality to samples submitted by the Contractor. All materials which do not conform to such requirements shall be rejected, and the Contractor shall remove such rejected materials from the vicinity of the Work within twenty-four (24) hours thereafter.

The inspection and supervision of the Work and materials by the Engineer, his assistants and inspectors, is intended to aid the Contractor in accomplishing the fulfillment of his duties and obligations under the contract, but such inspection and supervision shall not relieve the Contractor from his contract obligations.

Defective Work shall be made good and unsuitable materials may be rejected, notwithstanding that such Work and materials have been previously overlooked by the Engineer and accepted or estimated for payment. If the Work, or any part thereof, is found, at any time before the acceptance of the whole Work, to be defective, or to contain defective materials, the Contractor shall make good such defects under the direction of the Engineer.

Upon being attached to, or incorporated in the Work, affixed in or to the soil, all materials shall become the property of the County, and thereafter the Contractor shall have no right of property therein, unless they be afterward rejected by the Engineer.

The Contractor shall schedule inspection 24 hours in advance of their work. The Engineer will provide to the Contractor phone numbers and a contact person at the pre-construction meeting. The Contractor shall inform the Engineer of his work schedule and the hours that work will be performed. The Engineer shall approve the Contractor's schedule and hours of operation before the Contractor may begin work.

When work is scheduled and the Contractor desires to change the approved schedule, the Contractor shall contact the Engineer at least one hour prior to starting time to cancel or adjust the hours of inspection. If the Contractor fails to contact the Engineer as stated above the Contractor will be charged for four (4) hours of inspection time at the current inspection rate. This cost will be subtracted from the Contractor's monthly pay estimate.

11. SUSPENSION OF WORK

The County reserves the right to suspend Work upon all or part of this Project for the purpose of doing anything thought necessary, or for any other reason, and for such period as it may deem necessary, and the Contractor shall not be entitled to any damages on account of suspension, but the time of completion shall, if necessary, be extended by as many days as such delays lasts. Upon such suspension, the Contractor shall lay out all materials in a neat manner, provide properly for storm drainage, pedestrian and vehicular traffic, and provide means for properly protecting the Work and the public from injury or damage.

12. EXTRA AND UNCLASSIFIED WORK

Extra work is any work in connection with the execution and completion of the contract, for which no price is included in the contract, and the doing of which can be deemed to be reasonably included in the contract, or that which is caused by an unforeseen contingency not contemplated by the contract. The Engineer shall have the right to require the Contractor to perform extra work, or to supply materials of a class not provided for, but the Contractor shall not furnish any such work or material, unless he has first been ordered to do so by the County Executive or the Board of Control or the County Council as provided by the ordinances of the County. In case the price to be paid for such work or materials cannot be agreed upon using one of the following methods, the Engineer shall determine the price which shall be allowed therefore, and when so determined, such price shall be final and binding upon both parties hereto.

The amount to be paid to the Contractor for extra Work shall be determined by one or more of the following methods:

- a) By unit prices contained in the Contractor's original bid and incorporated in the construction contract;
- b) By a supplemental schedule of prices based upon and comparable to the prices contained in the Contractor's original bid and incorporated in the construction contract;
- c) By an acceptable lump sum proposal from the Contractor; and / or
- d) on a cost-plus-limited basis not to exceed a specified limit. A cost-plus-limited basis is defined as the cost of labor, materials, and insurance, plus ten percent (10%) of the said cost to cover superintendence, general expense and profit.

13. Claims Management Policy

The Engineer recognizes the need to contend with claims experienced by the contractor that are not addressed by the contract. This policy acts as directive to provide stability and expertise in the management of its claims and to ensure they are investigated, evaluated, and resolved in a timely and professional manner.

Claims

A dispute is not identified as a claim until a *Notice of Intent to File a Claim*. The *Notice of Intent to File a Claim* cannot be made until Steps 1 and 2 are completed. A claim is defined as formal assertion by the contractor for something due or believed to be due to the contractor. This claim may include monetary compensation and/or time extension for the completion of the contract. All claims must be presented by the Prime Contractor. Claims submitted by a sub-contractor or supplier against the City or Prime Contractor shall not be accepted.

Purpose

This policy attempts to resolve disputes in a fair and cost-effective manner. The documentation resulting from this procedure will provide information needed to make a reasonable and unbiased decision. The Engineer acknowledges that costs can be kept to a minimum when the resolution is found at the earliest step possible.

Process

The Contractor must exhaust all three steps of this policy prior to seeking additional compensation or contract time by filing an action in the applicable Court of Law.

The Contractor must follow this policy to be eligible for any compensation (time or monetary) for any and all claims not addressed by a Change Order. All steps in the policy must be completed prior to moving to the next step. The Contractor shall continue with all Work, including that which is in dispute. The Engineer will continue to pay for work being performed.

Prior to entering into the formal claim resolution process, both the contractor superintendent and the Construction Inspector and Project Engineer agree to attempt to resolve any disputes in a good faith effort that is fair and equitable to both the contractor and the County within the guidelines and requirements established by the contract. If this good faith effort does not resolve the problem, the contractor may proceed into the Claims Management Procedure.

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

Step 1 (On-Site Determination)

The Project Engineer shall meet with the Contractor's superintendent and Construction Inspector within two (2) working days of receipt of the Contractor Written Early Notice set forth in 108.02.F of the ODOT Construction and Material Specifications. The Project Engineer will negotiate in an effort to reach a resolution according to the Contract Documents. The Project Engineer will issue a written decision of Step 1 within fourteen (14) calendar days of the meeting. If the dispute is not resolved, the Contractor must either abandon or escalate the dispute to Step 2. The claim along with all pertinent information and contract provisions shall be presented to the Project Engineer by the Contractor and County representatives.

Step 2 (Construction Section Manager)

Within seven (7) calendar days of receipt of the Step 1 decision, the Contractor must submit a written request for a Step 2 meeting to the Construction Section Manager. The Construction Section Manager will assign the dispute a dispute number. Within fourteen (14) calendar days of receipt of the request for a Step 2 meeting, the Contractor shall submit the Dispute Documentation as follows:

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

The Construction Section Manager shall review and recommend a resolution to the claim. If recommended by the Construction Section Manager, the process will cease and the claim will be processed as a Change Order. Otherwise, the Construction Section Manager will meet with the contractor's representative, the Project Engineer, and Construction Inspector within fourteen (14) days to hear each party's stance and as a last chance opportunity to resolve the claim before escalating to Step 3. The Construction Section Manager will issue a written determination of Step 2 to the contractor and project file within fourteen (14) days. If the dispute is not resolved, the Contractor must either abandon or escalate the dispute to Step 3.

Step 3 (Engineer's Claims Committee)

Within fourteen (14) calendar days of receipt of the Step 2 decision, the Contractor must submit a written *Notice of Intent to File a Claim* to the Engineer. This notice shall state the Contractor's request for an Engineer's hearing on the claim.

The dispute becomes a claim when the Engineer receives the *Notice of Intent to File a Claim*.

The Engineer's Claim Committee will consist of the Chief Deputy Engineer, the Deputy Director of Engineering Services, and the Public Works Director, or designees. The County Prosecutor will provide advice to the Engineer. The Engineer will be responsible for deciding claims.

Engineer's Claim Committee Hearing

The Contractor shall submit six (6) complete copies of its Claim Documentation to the Engineer within thirty (30) calendar days of receipt of the *Notice of Intent to File a Claim*. This time frame may be extended upon mutual agreement of the parties and with approval of the Committee. In addition to the documentation submitted at Step 2, the narrative shall be enhanced to include sufficient description and information to enable understanding by a third party who has no knowledge of the dispute or familiarity with the project. This documentation must also include a discussion of the efforts taken to resolve the dispute. When submitting the Claim Documentation, the Contractor must certify the claim in writing. Such certification shall attest to the following:

1. The claim is made in good faith.
2. To the best of the Contractor's knowledge, all data offered to support the claim is accurate and complete.
3. The claim amount accurately reflects the Contractor's actual incurred costs and additional time impacts.

This claim certification shall also be notarized pursuant to the laws of the State of Ohio. The following is an example of the correct form for a claim certification:

(The Contractor) certifies that this claim is made in good faith, that all supporting data is accurate and complete to the best of (the Contractor's) knowledge and belief, and that the claim amount accurately reflects the contract amendment for which (the Contractor) believes the County is liable.

By: _____
(The Contractor, Name and Title)
Date of Execution: _____

Within thirty (30) calendar days of receipt of the Contractor's Claim Documentation, the

Construction Section Manager shall submit six (6) complete copies of its Claim Documentation to the Engineer. In the event that the Contractor is granted a time extension for the submission of its Claim Documentation, the Construction Section Manager will be granted an equal time extension for submission of its Claim Documentation. At a minimum, the Construction Section Manager's Claim Documentation must include:

1. A narrative of the disputed work or project circumstance at issue with sufficient description and information to enable understanding by a third party who has no knowledge of the dispute or familiarity with the project. This section must include the dates of the disputed work and the date of early notice. The narrative must also discuss the prior efforts taken to resolve the dispute.
2. References to the applicable provisions of the plans, specifications, proposal, or other contract documents. Copies of the cited provisions shall be included in the claim document.
3. Response to each argument set forth by the Contractor.
4. Any counter-claims, accompanied by supporting documentation, the **Engineer Claims Committee** wishes to assert.
5. Copies of relevant correspondence and other pertinent documents.

Within fourteen (14) calendar days of receipt of the Construction Manager's Claim Documentation, the Engineer will forward one (1) complete copy to the Contractor and will schedule a hearing on the dispute. Once a hearing date has been established, both the Contractor and Construction Manager shall provide the Engineer with the list of names and telephone numbers of each person who may present information at the hearing. Reasonable time, generally not to exceed 60 days, will be provided for submission and review of additional documentation by either party prior to the hearing date. However, unless otherwise permitted by the Committee, the exchange of documentation and all disclosures specified in this step of the process shall be completed at least fourteen (14) calendar days prior to the hearing. Upon request or at the Committee's discretion, the Committee may delay the hearing one (1) time to allow more time for review and requests for more documentation. In the event of multiple claims, the Committee may order that they be considered in a single hearing. The Committee may hold this hearing after the completion of the project or until such time that it is assured that all disputes on the project have been processed through Steps 1 and 2. The Contractor and Construction Manager will each be allowed adequate time to present their respective positions before the Committee. The Contractor and Construction Manager will also each be allowed adequate time for one (1) rebuttal limited to the scope of the opposing party's presentation. The Contractor's position will be presented by a Contractor's representative who is thoroughly knowledgeable of the claim. Similarly, the Construction Manager's position will be presented by the Construction Manager or a representative who is thoroughly knowledgeable of the claim. Each party may have others assist in the presentation. The Committee may, on its own initiative, request information of the Contractor or Construction Manager in addition to that submitted for the hearing. If the Contractor or Construction Manager fails to reasonably comply with such request, the Committee may render its decision without such information. Upon completion of the hearing and consideration of any additional information submitted upon request, the Committee will submit a written recommendation on the disposition of the claim to the Engineer. The Engineer will ratify, modify, or reject the recommendation of the Committee and render its decision within sixty (60) calendar days of the hearing. Within thirty (30) calendar days of receipt of the Committee's decision, the Contractor must either accept or reject

the decision in writing. In the event the Contractor fails to do so, the Committee may revoke any offers of settlement contained in the decision. The decision of the Committee is the final step of the Summit County Engineer's Dispute Resolution Process and may not be appealed within the Engineer's Office. The Committee is not bound by any offers of settlement or findings of entitlement made during Steps 1 and 2 of the Dispute Resolution Process.

Acknowledgements.

Similarities in language and procedure to ODOT Proposal Note 109 are deliberate. An attempt is being made to model this policy after ODOT's Dispute Resolution and Administrative Claim Process. This attempt is being made to standardize and create a uniform practice across the industry.

14. DUTIES OF THE CONTRACTOR

The Contractor shall give his personal attention and supervision continuously to the faithful prosecution of the Work, shall keep the same under his personal control, and shall not assign, by power of attorney or otherwise, nor sublet the Work or any part thereof, without the previous written consent of the Engineer. He shall not, either legally or equitably, assign any of the moneys payable under this agreement, or his claim thereon, unless by and with the like consent of the County.

The Contractors shall employ only competent and skillful workmen to do the Work. Incompetent, careless or disorderly workmen or foremen, will not be permitted on the Work, and any such workmen shall be discharged immediately by the Contractor upon complaint of the Engineer, and shall not be re-employed on this contract without The Engineer's consent.

All materials used in the Work shall be of the best quality, unless notations on the plans and specifications provide otherwise, and shall conform in all respects to the requirements of the specifications. No materials shall be used unless they have been examined and approved by the Engineer or his inspectors. In case any material is rejected, the Contractor shall remove such material from the site of the Work at once, and shall not again submit it or any of it for inspection. The Contractor shall at once remove, upon the order of the Engineer, any defective materials, or Work, which may have been placed in the Project, even though such material, or Work, have previously been approved, through oversight or error, by the Engineer, and shall replace the same with acceptable materials and workmanship.

The Contractor shall provide a Field Office, of the type specified in the plans, as per Item 619 of the Specifications. The Contractor shall keep a full set of plans and specifications on the Work at all time.

It shall be the duty of the Contractor to cooperate with property owners, owners of public utilities, and with other contractors of the County, in such manner and to such extent as the Engineer may determine, to the end that the interests of the County and the public may be best conserved and protected, and that there may be as little damage and inconvenience as possible, resulting from operations hereunder to such property or property owners and in the transaction of business.

The Contractor shall furnish, without extra compensation therefore, such assistance as the Engineer, or his assistants or inspectors may require, in measuring in and setting stakes or marks for indicating lines, grades or levels, for measuring or determining quantities for estimates, and for handling and inspecting materials to be used on the Work, whether such materials have been delivered upon the site of the Work or are in local storage. The Contractor shall provide such facilities for weighing and measuring materials, as the Engineer may deem necessary, to secure the proper fulfillment of the provisions and requirements of the specifications.

The Contractor shall diligently protect and preserve all stakes, marks, bench marks and monuments, set or used by the Engineer, and shall be responsible for securing therefrom the proper lines, grades and levels for the structures to be built.

The Contractor shall provide the Engineer, upon request, with bills of lading, or invoices of any or all material used or to be used on this Work, and shall make accessible to the Engineer the original time-books, covering any extra work or work done on force account.

The Contractor shall keep himself fully informed of, and comply with, all existing and future laws, statutes, ordinances, rules and regulations, whether of National, State or Local force, which in any way effect the conduct of the Work to be done, the materials to be used, the persons engaged or employed on the Work, or property right. He shall at all times observe and comply, and see that all of his employees and agents observe and comply, with such laws, statutes, ordinances, rules and regulations. The Contractor shall protect and indemnify the County, their officers and agents, against any claim or liability, arising or based on the violation of any such laws, statutes, ordinances, rules or regulations, whether by himself or by his employees or agents.

The Contractor shall also inform himself as to the prevailing rates of wages on Public Improvements, current at the time this Work is in progress as provided by law.

The Contractor shall observe and comply with the specific safety requirement of the Ohio Department of Industrial Relations, and the rules of the Commission relating to construction Work are hereby made a part of these specifications.

In connection with the foregoing, particular attention is called to laws and regulations dealing with workmen's compensation, employer's liability, social security and labor laws, explosives, boilers, natural watercourses and sanitation.

The Contractor shall cause to be constructed, in such manner and at such points as the Engineer may require, necessary sanitary conveniences for the use of employees on the Work. They shall be properly secluded from public observation, shall be maintained sanitary and inoffensive at all times, and their use shall be strictly enforced. The Contractor shall provide an ample supply of pure drinking water for employees at all times, and the source of such supply shall be subject, at all times, to the approval of the Engineer.

15. INDEMNITY

The Contractor agrees, in contracting hereunder, to assume all responsibilities for the Work, and all liabilities arising by virtue of the prosecuting of such Work, or in connection therewith, in accordance with the terms and provisions herein given.

The Contractor shall assume the defense of, save and hold harmless and indemnify the County, and its individual officers, employees and agents, from all claims for compensation or damages relating to labor or materials furnished for the Work, or to inventions or patents used, or rights pertaining thereto, from any and all claims for damages or injuries to persons or property, arising either directly or indirectly from the prosecution of the Work, or in connection therewith, or resulting therefrom. The Contractor shall assume the duty to give written notice of prospective operations to the owner, or owners, of any and all gas, sewer, water, or other pipes or conduits, poles, wires or other fixtures related thereto, fences, building, railway tracks or other public or private property, which may be endangered or affected by such operation, which notice shall be sufficiently in advance of such operations to allow such owner, or owners, ample time to protect his or their property; and whether or not such property is protected by such owner or owners, the Contractor shall assume all risk of damage thereto, and shall make good, at his own expense and to the owner's satisfaction, any property damaged by his operations, in connection therewith or as a result thereof.

The Contractor shall at his own expense, furnish, erect and maintain such barricades, fences, red lights and watchman, as may be necessary therefore, and shall properly protect all persons, animals and property against injury or damage which might result as a consequence of this Work. He assumes, hereby, all liability for injury to the Work, or any portion thereof, which may be occasioned by an action of the elements, or from any other cause, and shall replace, or rebuild, to the satisfaction of the Engineer, any and all portions of the Work which may be so injured. He shall furnish suitable housing for materials to be used, and shall protect all materials, and finished or unfinished Work, until such materials are used, and until the Work is finished and accepted.

The Contractor shall be liable for, and shall settle all claims demurrage for freight cars and under no conditions shall he make, or be allowed, extra compensation therefore.

The Contractor shall be responsible for the safety and sufficiency of the methods, appliances and plant used in prosecuting Work, and shall be liable for any or all claims arising from any thereof.

16. WAIVER OF RIGHTS

The Contractor agrees, in contracting for Work, that he has investigated, studied and verified the plans and specifications, the circumstances and conditions under which labor and materials must be supplied and the Work prosecuted and completed, and has made due allowance therefore, as well as for inaccuracy of borings and any unforeseen difficulties in the performance of the Work hereunder. He further agrees that he will not claim, and hereby waives all rights to, damages or additional recompense, over or above the price bid for

unforeseen difficulties or hindrances which may arise, other than these which may be expressly specified herein.

No act of the Engineer, or his assistants or inspectors, shall operate as a waiver of any provisions of the contract, nor shall any breach of this contract operate as a waiver of any other subsequent breach. Any and all remedies provided in this contract are cumulative, in addition to each other remedy herein provided. The mention of any specific duty liability of the Contractor, in any part of the specifications or act, shall not be construed as a limitation or restriction upon general liability or duty imposed upon the Contractor by said specifications and contract. Should any part of the Work be sublet by Contractor, such action shall in no way release said Contractor any liability or obligation hereunder, but he shall be liable for acts and negligence of any sub-contractor, and shall be responsible for the complete fulfillment of the provisions of this act the same as though no sub-contract existed.

17. INJUNCTIONS

If legal obstructions to the prosecution of the Work arise, the delay shall operate to extend the time for the completion of the part, or parts of the Work so obstructed for the length of time the obstruction continues, and no longer, but no damages shall be claimed by, or allowed to, the Contractor for any delay.

18. RIGHT-OF-WAY

Wherever it is required, as a part of the contract, to perform Work within the limits of private property, or in right-of-way, such Work shall be done in conformity with all agreements between the County and such owners, and whether or not such a condition be part of the agreement, care shall be taken to avoid injury to the premises entered, which premises shall be left in a neat and orderly condition by the removal of rubbish and the grading of surplus materials, and the restoration of said property to the same general conditions as at the time of entry for Work to be performed under this contract.

19. TERMINATION OF THE CONTRACT

If the Work to be done under this contract shall be abandoned by the Contractor, or if this contract, or any part thereof, shall be assigned, or the Work sublet by him, without the previous written consent of the County, or if, at any time any officials of the County, or employee thereof, shall become directly or indirectly interested in the contract, or in furnishing the supplies or performing the Work thereunder, or in any portion of the profit thereof, or if at any time the Contractor shall become insolvent or bankrupt, or if at any time the County shall be of the opinion that the performance of the contract is unnecessarily or unreasonably delayed, or that the Contractor is willfully violating any of the provisions of this contract; or if the Work is not fully completed within the time named in the contract; then, and in any such case, the County may notify the Contractor to discontinue the Work, or such part thereof as may be

designated by the Engineer. The Engineer will thereupon appraise and survey the Work completed according to the contract, make proper estimates of the cost of such Work and payment due the Contractor. such reports shall be forwarded to the Surety and the Contractor together with the Engineer's request for removal of the Contractor and the Engineer's

recommendation of the cost of the remaining Work and his recommendation for final disposition and dissolution of this contract.

All expenses incurred by the County and chargeable under these clauses, or by virtue of this contract, shall be deducted and retained by the County out of any moneys then due, or to become due the Contractor under, and by virtue of, this contract or any part thereof. In case such expense shall exceed the amount which would have been payable under the contract, if the same has been completed by the Contractor, the Contractor, or his sureties, shall pay the amount of such excess to the County; but should such expense be less than the amount payable under this contract, if the same has been completed by the Contractor, he shall receive the difference, but shall not be entitled to damages for not being allowed to complete the Work himself.

The Contractor, when required, shall furnish the County with satisfactory evidence that all persons who have done Work for, or furnished materials to the Contractor, for the Work on this Project, or have suffered damage in connection therewith, have been fully paid or secured. Upon completion of the Work the Contractor, shall furnish the County with a sworn statement and shall produce receipted bills, or other evidence required as proof thereof, that all persons having had lawful claims for Work done, or materials furnished, or damages incurred by reason of this Project, have been fully paid or secured. In case such evidence is not furnished as required, such amounts, as the County Executive shall consider necessary to meet such lawful claims shall be retained by the County from the monies otherwise due said Contractor under this contract until the aforesaid claims shall have been fully satisfied by the Contractor, or in case of failure of the Contractor to do so, the County shall use such amounts to satisfy such claims free and clear of any obligations to the Contractor.

20. FINAL APPROVAL & ACCEPTANCE

The County Executive's approval of the final estimate for the Work done shall constitute the acceptance of the completed Work.

21. PAYMENTS

The payment for Work done, under any item contained in the proposal, or in any supplemental contract, shall cover the furnishing of all labor and materials necessary to the construction and completion of such items as specified, including any and all necessary excavation, removal of loose or unsound concrete, pavement, railings, or any other materials, whether earth, sand, rock, muck, timber or old structures, as well as pumping, draining, maintaining of flow in existing sewers and drains, sheeting, bracing, coffer-damming, back-filling, constructing, embankment, removal of surplus materials, restoration of streets and roads, and cleaning up the site of the Work, except when, and as, otherwise specifically provided in this Contract.

On or about the first day of the month, the Contractor shall submit to the Engineer, one original and one copy of an invoice on a form as prescribed by the County. The invoice shall detail all Work performed and shall be in an amount equal to the total cost at contract rates for all Work performed less any and all amounts previously paid and less retainage as applicable pursuant to sections 153.12, 153.13, 153.14 and 153.63 of the Ohio Revised Code.

If the County approves the invoice, the County will within sixty (60) days thereafter, pay to the Contractor the invoice amount due. If the County does not approve the invoice submitted by the Contractor, the County will advise the Contractor of the reason for such disapproval within ten (10) days of receipt of said invoice and no amount will be due and payable to the Contractor until the reasons for the disapproval are remedied to the satisfaction of the County.

Such payments shall not operate as an acceptance of the Work done. No Work shall be accepted until fully completed, or opened for beneficial use and occupancy. All prior partial estimates and payments will be subject to correction in the final estimate.

22. PAYMENTS; LAST PAYMENT TO TERMINATE LIABILITY OF THE COUNTY

No persons, or corporation, other than the signer of the contract as Contractor, has now any interest hereunder, and no claim shall be made or be valid, and neither the County, nor its agents, shall be liable for, or held to pay any money, except as provided.

The County shall pay, and the Contractor shall receive, the prices herein stipulated, as full compensation for everything furnished and done by the Contractor under this contract, including all incidental Work required but not specifically mentioned, and also for all loss, or damage, arising out of the nature of the Work aforesaid, or from the action of the weather, floods, or from any unforeseen obstruction, or difficulty, encountered in the prosecution of the Work, and for all risks of every description connected with the Work, and for all expenses incurred by, or in consequence of, the suspension or discontinuance of the Work, as herein specified, and for well and faithfully completing the Work, and the whole thereof, as herein provided, together with the remedying of all defects. The acceptance by the Contractor of the last estimate, made as aforesaid, shall operate as a release to the County and its agent, from any and all claims relating to the Work of any nature whatsoever.

23. INADEQUACY OF SURETY

If, at any time after execution and approval of this contract, and the performance bond required by the contract documents, the County Executive 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 County, the Contractor shall, within five (5) days after notice from the County Executive, furnish a new or additional bond, in the form and sum required by the County Executive to be signed by such sureties as shall be satisfactory to the County. 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.

24. Federal Requirements

- I. The required contract provisions for federal-aid construction contracts contained in "ODOT's 2013 LPA Template" are hereby incorporated by reference.
- II. Pages 29-1 through 29-34 contain the standard ODOT Bid Template for LPA projects.

III. All requirements and provisions of this section (the ODOT 2013 LPA Template) supersede any and all conflicting (Summit County) general provisions and/or bid conditions contained in other sections of the bid document.

IV. The bidder is required to circle the appropriate response on ODOT 2013 Template page 29-3.