

OWNER-CONTRACTOR AGREEMENT

OWNER:

Lancaster Department of Transportation
815 Lawrence Street
Lancaster, Ohio 43130
Phone: (740) 687-6668
FAX: (740) 687-6694

Contract: _____

Alternates: _____

Contractor: _____

Address: _____

PROJECT: City Transit Paving

Fax: _____

Date: _____

This document is an agreement between the Owner and the Contractor for the Work described in the Contract Documents related to the Contract identified above for the Project and is effective as of the date set forth above ("Effective Date of this Agreement"), which if no date is entered shall be the date the Agreement was signed by the Owner.

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

1. **CONTRACT DOCUMENTS.** The Contract Documents consist of the following documents:
 - A. Notice to Bidders [or Invitation to Bid];
 - B. Instructions to Bidders;
 - C. Bid Form;
 - D. Surety Bond
 - E. Owner-Contractor Agreement;
 - F. General Conditions of the Contract for Construction (EJCDC C-700, 2002 edition), as modified;
 - G. Drawings;
 - H. Specifications;
 - I. Addenda issued;
 - J. Contractor's Personal Property Tax Affidavit (O.R.C. 5719.042);
 - K. Statement of Claim Form; and
 - L. Modifications issued after the execution of the contract, including:
 - i. A written amendment to the Agreement signed by both parties;
 - ii. A Change Order;
 - iii. A Work Change Directive; or,
 - iv. A written order for a minor change of the Work issued by the Engineer in accordance with the General Conditions

Note. Non-Contract Documents. The following are the reports and tests of subsurface conditions at or contiguous to the Site, if any, that the Engineer has used in preparing the Contract Documents. These are not Contract Documents. The General Conditions, as modified, contain additional terms related to these reports and tests. (None if none are listed).

Contractor's Progress Schedule for performing the Work shall account for Contractor not being able to perform Work on these dates and the contractual dates for Substantial Completion and Final Completion will not be changed due to Contractor not being able to perform Work on these dates.

3.3 **PROGRESS SCHEDULE.** The Progress Schedule shall be developed by the Coordinating Contractor as provided in the Contract Documents.

3.4 **COORDINATING CONTRACTOR.** The Coordinating Contractor shall be the _____ Contractor (if this blank is completed, then the Coordinating Contractor shall be the General Trades Contractor or, if there is only one contractor, the Contractor). The Coordinating Contractor shall be responsible for coordinating the work of all contractors on the Project.

3.5 **LIQUIDATED DAMAGES.** If the Contractor does not have its Work on the Project Substantially Complete by its Date for Substantial Completion or Finally Complete within forty-five (45) days of achieving Substantial Completion, the Contractor shall pay the Owner (and the Owner may set off from sums coming due the Contractor) Liquidated Damages in the per diem amounts as set forth in the following tables, whichever may be applicable:

LIQUIDATED DAMAGES – DATE FOR SUBSTANTIAL COMPLETION

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1.00 to \$50,000.00	\$ 250.00
\$50,000.01 to \$150,000.00	\$ 500.00
\$150,000.01 to \$500,000.00	\$1,000.00
\$500,000.01 to \$2,000,000.00	\$1,500.00
\$2,000,000.01 to \$5,000,000.00	\$2,500.00
\$5,000,000.01 to \$10,000,000.00	\$3,000.00

LIQUIDATED DAMAGES – FINAL COMPLETION

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1.00 to \$50,000.00	\$ 50.00
\$50,000.01 to \$150,000.00	\$ 100.00
\$150,000.01 to \$500,000.00	\$ 200.00
\$500,000.01 to \$2,000,000.00	\$ 300.00
\$2,000,000.01 to \$5,000,000.00	\$ 500.00
\$5,000,000.01 to \$10,000,000.00	\$ 600.00

In addition to such Liquidated Damages, the Contractor shall indemnify, defend and hold the Owner and its employees and agents harmless from any and all claims, whether or not such claims are proven, and from all costs and expenses incurred, as a result of or related to such claims, including but not limited to attorneys' and consultants' fees and expenses, provided that such claims arise out of or are related to the Contractor's failure to Substantially Complete its Work by its Date for Substantial Completion or its failure to Finally Complete its Work within forty-five (45) days of its Date for Substantial Completion. The Contractor's obligation to indemnify, defend and hold the Owner harmless under this Paragraph 3.5 shall be joint and several. These Liquidated Damages are in addition to any other remedies available to the Owner under the Contract Documents.

The Contractor acknowledges that such amounts of Liquidated Damages represent a reasonable estimate of the actual damages for loss of or interference with the intended use of the Project that the Owner would incur if the Contractor's Work is not completed with in milestone dates, Substantially Complete by its Date for Substantial Completion or Finally Complete by the required date for Final Completion.

4. **CONTRACT SUM (also called Contract Price).** The lump sum Contract Sum to be paid by the Owner to the Contractor, as provided herein, for the satisfactory performance and completion of the Work and all of the duties, obligations and responsibilities of the Contractor under this Agreement and the other Contract Documents is _____ Dollars (\$_____). The Contract Sum includes all federal, state, county, municipal, and other taxes imposed by law, including but not limited to any sales, use, commercial activity and personal property taxes payable by or levied against the Contractor on account of the Work or the materials incorporated into the Work. The Contractor will pay any such taxes. The Contract Sum includes the following:

Base Bid Amount:	\$ _____
Alternate No. ____	\$ _____
Alternate No. ____	\$ _____

If after Substantial Completion of its Work, the Contractor fails to submit its final payment application with all the documents required to be submitted with such application within ninety (90) days after written notice to do so from the Owner and without prejudice to any other rights and remedies the Owner may have available to it, the balance of the Contract Sum shall become the Owner's sole and exclusive property, and the Contractor shall have no further interest in or right to such balance.

5. **RETAINAGE.** Retainage applicable to the Contract by Ohio Revised Code Sections 153.12, .13, and .14 will be withheld as defined in the General Conditions. The Contractor agrees that the financial institution selected by the Owner for deposit of retained funds is acceptable to the Contractor and will sign any documents requested related to said account.

6. **LIMITATION ON LIABILITY.** The Owner's total liability under this Agreement will be limited to the amount set forth in the Auditor's certificate accompanying this Agreement. Under no circumstances will the elected officials, officers, employees, board or council members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

7. **GENERAL.**

7.1 **MODIFICATION.** No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. In the case of the Owner, the person executing the modification or waiver must have express authority to execute the Modification on behalf of the Owner pursuant to a resolution that is duly adopted by the Owner. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this paragraph.

7.2 **ASSIGNMENT.** The Contractor may not assign this Agreement without the written consent of the Owner, which the Owner may withhold in its sole discretion.

7.3 **LAW AND JURISDICTION.** All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligation of the parties will be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court, Fairfield County, Ohio, and each party hereby expressly consents to the exclusive jurisdiction of such court.

7.4 CONSTRUCTION. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and entered into this Agreement as a free and voluntary act. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

7.5 APPROVALS. Except as expressly provided herein, the approvals and determinations of the Owner and Engineer will be subject to the sole discretion of the respective party and be valid and binding on the Contractor, provided only that they be made in good faith, i.e., honestly. If the Contractor challenges any such approval or determination, the Contractor has the burden of proving that it was not made in good faith by clear and convincing evidence.

7.6 PARTIAL INVALIDITY. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

7.7 COMPLIANCE WITH LAWS AND REGULATIONS. The Contractor, at its expense, will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work, including but not limited to Chapter 4115 of the Ohio Revised Code and Sections 153.59 and 153.60 of the Ohio Revised Code, which prohibit discrimination in the hiring and treatment of employees, with respect to which the Contractor agrees to comply and to require its subcontractors to comply.

7.7.1 NON-DISCRIMINATION. Contractor agrees:

- .1 That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Contractor, subcontractor, or any person acting on behalf of either of them, shall by reason of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color, shall 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.
- .2 That neither the Contractor, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color.
- .3 That there shall be deducted from the amount payable to the Contractor by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
- .4 That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

7.7.2 PREVAILING WAGE RATES. The Contractor and its subcontractors, regardless of tier, shall strictly comply with their obligation to pay their employees working on the Project site at the applicable prevailing wage rates for the type of work, including any changes thereto, without increase in the Contract Sum.

7.7.3 ETHICS. By signing and entering into this agreement with the Owner, the Contractor represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements. The Contractor understands that failure to comply with the ethics laws is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the Owner.

7.8 JOB MEETINGS. The Contractor or one of its representatives with authority to bind the Contractor will attend all job meetings. The Owner anticipates that job meetings will be scheduled on a weekly basis during construction or as needed. The Contractor will ensure that its Subcontractors also hold regular job meetings at which safety issues and job matters are discussed as these relate to the Work being performed. Job meetings include, but are not limited to, pre-construction meetings, weekly job meetings, weekly safety tool box meetings, and monthly safety meetings.

7.9 PROPERTY TAX AFFIDAVIT. The Contractor's affidavit given under Section 5719.024, Ohio Revised Code, is incorporated herein.

7.10 PARTNERING. Contractor agrees that it will participate, as part of the Contract Sum, in any partnering sessions scheduled by Owner.

7.11 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

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

Owner: The City of Lancaster

CONTRACTOR: _____

BY: _____

BY: _____

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

CERTIFICATE

(Section 5705.41, R.C.)

The undersigned, as auditor of the City of Lancaster, Fairfield County, Ohio, certifies that the moneys required to meet the obligations of the Owner during the current fiscal year, under the attached Agreement for the services indicated herein have been lawfully appropriated for those purposes and are in the appropriate account of the Owner, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances.

DATED: _____

The City of Lancaster

By:

Mary F. Green, City Auditor

CONTRACT AFFIDAVIT

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

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

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

_____ (address) _____ (city)
_____ (county) _____ (state)

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

Affiant further says he that _____ is the (name of corporate officer) _____ of the corporation and is duly authorized (corporate title) to sign the Agreement to the City of Lancaster, Ohio for the improvement project

CITY TRANSIT PAVING

For said corporation by virtue of

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

Affiant

Sworn to before me and subscribed in my presence this day _____ of _____, 200 .

Notary Public

My commission expires: _____

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

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned ("Contractor") as principal and _____ as sureties, are hereby held and firmly bound unto the City of Lancaster, Fairfield County, Ohio, (referred to as the "City") as obligee, in the penal sum of _____ Dollars (\$ _____), for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this ____ day of _____, 200__.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas, the above-named principal did on the ____ day of _____, 200__, enter into a contract with the City for _____ [INSERT BID PACKAGE NUMBER AND DESCRIPTION] in connection with the construction of **CITY TRANSIT PAVING**, which said contract is made a part of this bond the same as though set forth herein:

Now, if the said Contractor shall well and faithfully do and perform the things agreed by the Contractor to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond. The surety further stipulates that it is authorized to execute bonds in the State of Ohio and that the liability incurred is within the limits of Section 3929.02 of the Revised Code.

Signed and sealed this ____ day of _____, 200__.

(PRINCIPAL) (Seal)

By: _____

Printed Name & Title: _____

(SURETY) (Seal)

By: _____

Printed Name & Title: _____

NAME OF SURETY'S AGENT

Surety's Agent's Address: _____

Surety's Agent's Telephone Number: _____

Surety's Agent's Fax Number: _____

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

STATE OF _____ SS

COUNTY OF _____

_____ being first duly sworn, deposes and says that
he is _____ of _____ the part who
(Title) (Company)

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

Further more, said party agrees to abide by the assurance found in Section 153.54 of the Ohio Revised Code in the Contract Provisions with the Owner if selected as the successful bidder by the Owner.

Signature

Affiant

Company/Corporation

Address

City/State/Zip Code

Sworn to and subscribed before me this _____ day of _____, 200__.

(Seal)

Notary Public

CONTRACTOR EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

During the performance of this contract, the undersigned agrees as follows:

(1) The undersigned will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The undersigned will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The undersigned agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this equal opportunity (federally assisted construction) clause.

(2) The undersigned will, in all solicitations or advertisements for employees placed by or on behalf of the undersigned, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The undersigned will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the undersigned's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The undersigned will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The undersigned will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the undersigned's non-compliance with the equal opportunity (federally assisted construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the undersigned may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as provided by law.

(7) The undersigned will include this equal opportunity (federally assisted construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The undersigned will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor, as a result of such direction by the administering agency the undersigned may request the United States to enter into such litigation to protect the interest of the United States.

(Signature)

(Date)

(Name and Title of Signer, Please Type)

(Firm Name)

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

