



**OHIO TURNPIKE AND
INFRASTRUCTURE COMMISSION**

ADDENDUM NO. 1
ISSUED MARCH 29, 2021

to
LOI NO. 5-2021

**REQUEST FOR LETTERS OF INTEREST (LOIs) FOR CONSTRUCTION
ADMINISTRATION AND PROTECTIVE COATINGS INSPECTION SERVICES FOR
PROJECT NO. 40-20-01**

LETTERS OF INTEREST DUE DATE: 5:00 P.M. (Eastern) APRIL 13, 2021


ATTENTION OF RESPONDENTS IS DIRECTED TO:

CHANGES TO REQUEST FOR LETTERS OF INTEREST:

- 1. Request for Letters of Interest:**
 - a. Added reference that Commission will not pay contractor's mileage or overnight stay.
 - b. Updated the factors to be evaluated.

- 2. Appendix B – Contract for Professional Services for a Construction Project:**
 - a. Deleted the word "telegraph" from the list of reimbursable expenses.
 - b. Deleted the portion of Section 2.4.1 to delete language authorizing payment of mileage and overnight stays. Note that the contract already stated that the Commission will not pay for travel time. See Section 2.4. Revised Section 2.4.3 to permit reimbursement for overnight stays only upon prior written approval.

Issued by the Ohio Turnpike and Infrastructure Commission through Jennifer L. Stueber, Esq., General Counsel.



Jennifer L. Stueber, Esq.,
General Counsel

March 29, 2021
Date

END OF ADDENDUM NO. 1



OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION
682 Prospect Street
Berea, Ohio 44017
(440) 971-2081

LOI NO. 5-2021

**REQUEST FOR LETTERS OF INTEREST (LOIs) FOR
CONSTRUCTION ADMINISTRATION AND PROTECTIVE
COATINGS INSPECTION SERVICES FOR
PROJECT NO. 40-20-01**

Bridge Repainting

Ohio Turnpike over Black River - M.P. 145.9;
Ohio Turnpike over Norfolk Southern Railroad - M.P. 147.9; Ohio Turnpike
over Cleveland Street (U.S. 20/S.R. 113) - M.P. 148.0,
Lorain County, Ohio

ISSUE DATE: March 23, 2021; revised 3-29-21

INQUIRY END DATE: 5:00 PM (Eastern) on April 6, 2021

**LETTERS OF INTEREST DUE
DATE: 5:00 P.M. (Eastern) April 13, 2021**

**COMMISSION MEETING: May 17, 2021 (anticipated meeting for
contract award; subject to change)**

The SBE goal for this project is 5%

In lieu of taking exceptions to the Request for Letters of Interests requirements, including but not limited to terms and conditions, scope of work statements, service levels requirements, etc., or providing assumptions that may be unacceptable to the Commission, Respondents are strongly encouraged to use the inquiry process in PART VI of this Request for Letters of Interest.

SUBMITTED BY:

COMPANY NAME _____

CONTACT NAME _____

STREET ADDRESS _____

CITY AND STATE _____

ZIP CODE _____ TELEPHONE NUMBER _____

EMAIL ADDRESS _____

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LOI NO. 5-2021

**REQUEST FOR LETTERS OF INTEREST (LOIs) FOR
CONSTRUCTION ADMINISTRATION AND PROTECTIVE COATINGS INSPECTION
SERVICES FOR PROJECT NO. 40-20-01**

PART I. BACKGROUND INFORMATION

The Ohio Turnpike and Infrastructure Commission (“Commission”), a body corporate and politic constituting an instrumentality of the State of Ohio, is responsible for operating and maintaining the Ohio Turnpike, a toll road officially known as the James W. Shocknessy Ohio Turnpike. The Ohio Turnpike is a limited access highway extending 241 miles across northern Ohio. Additional information regarding the Commission and the Ohio Turnpike can be found at <https://www.ohioturnpike.org/home>.

The Commission issues this Request for Letters of Interest seeking to select a qualified consultant (“Consultant”) to provide construction administration and protective coatings inspection services, as further described in Appendix A, for Project No. 40-20-01 - Bridge Repainting, Ohio Turnpike over Black River - M.P. 145.9, Ohio Turnpike over Norfolk Southern Railroad - M.P 147.9, and Ohio Turnpike over Cleveland Street (U.S. 20/S.R. 113) - M.P. 148.0, Lorain County, Ohio, (the “Project”).

Letters of Interest shall serve to provide information for the Commission to evaluate the Respondent’s qualifications to perform the services required for the Project. The Commission intends to select one consultant to enter into an agreement for the Project based on the LOI submittals.

Those firms interested in responding to the Request for Letters of Interest must have a completed “Request for Qualifications” (“RFQ”) package for calendar years 2021-2022 on file with the Commission to be considered as a potential Respondent. If a firm has not already responded to the RFQ, the RFQ package may be obtained through the inquiry process and its response submitted simultaneously with the LOI.

Any person responding (a “Respondent”) must clearly demonstrate depth of experience in providing construction administration and protective coatings inspection services, including familiarity with the various methodologies and industry best practices for performing the required tasks. Demonstrated experience in providing the necessary services is required.

PART II. ASSISTANCE FROM COMMISSION PERSONNEL

Commission personnel will be assigned to assist, as needed, with the coordination of the various aspects of any assignments. Commission personnel will also make available all documents in the Commission’s possession to the Consultant required for completion of its duties. Generally, the Commission’s Chief Engineer will administer and manage the contract for the Consultant’s services.

PART III. LOI REQUIREMENTS

The general nature and scope of work for the Project are set forth in Appendix A (“Scope of Services”). The Commission expects that Respondents will have experience in providing the services of this nature and should understand the general scope of the services necessary to successfully fulfill the Commission’s requirements. Respondents should prepare Letters of Interest that are concise and that include an explicit response to the items listed below:

1. Plainly identify the Consultant's legal name, contact person(s) and their email, phone number and physical address. Describe your organizational structure, staffing of the project, and specify the number of professional personnel by discipline based in the Ohio office(s) in which a bulk of the services will be performed.
2. List the types/categories of services for which the Consultant has a current Qualifications Statement on file with the Commission in response to the 2021-2022 RFQ and all ODOT Prequalifications, including Protective Coatings Inspection.
3. List the Project Manager and other key staff members including key subconsultant staff. Address the experience of the key staff members on similar projects. Provide a one (1) page résumé of the proposed Project Manager. The proposed Project Manager must be a professional engineer registered in the State of Ohio. Additionally, provide an organizational chart and no more than half-page resumes for each staff member assigned to the Project, which shall not exceed two (2) pages. Resumes should include the qualifications of the key staff and descriptions of work performed on similar projects.
4. Describe your firm's approach to quality control and any programs for providing technical direction and administrative control to assure conformance with industry-accepted standards of quality for the Project.
5. List significant subconsultants, their categories of service, qualifications, and the percentage of work to be performed by each proposed subconsultant.
6. Provide a description of your Project approach, not to exceed two (2) pages. Confirm the firm's understanding of the project, proposed technical approach, cost containment practices, innovative ideas for this type of project and any other relevant information concerning your firm's qualifications to perform the services contemplated under the project.
7. Describe the capacity of your firm's staff and its ability to perform the work in a timely manner relative to present workload and the availability of assigned staff.
8. Provide references from three (3) organizations other than the Ohio Turnpike and Infrastructure Commission for similar projects and services completed in the past ~~five (5)~~three (3) years. For each reference, provide a contact name and phone number.
9. List all services performed for the Ohio Turnpike and Infrastructure Commission over the last five (5) years.

Items 1 through 9 must be included in the LOI on single sided 8 1/2" x 11" sheets of paper. Items 1 through 9 shall not exceed twelve (12) pages and Item 6 shall not exceed two (2) pages and shall be in no smaller than size 11 font. The Letter of Interest shall not exceed twelve (12) pages. Items B, C, D and E listed in PART V below are excluded from the page limit. A one (1) page cover letter and a Table of Contents may be included and will not be considered as part of the twelve (12) page limit.

PART IV. FORM CONSULTING SERVICES CONTRACT REQUIREMENTS

In submitting a Letter of Interest, the Respondent agrees to sign the Consulting Services Contract attached as Appendix B, incorporating the Scope of Services, within ten (10) days of the Commission's delivering of a notice of award.

PART V. SUBMISSION REQUIREMENTS

For Respondent's Letter of Interest to be responsive, Respondent must submit the following:

- A. A Letter of Interest addressing the items listed in PART III, and limited to 12-pages, not including items B, C, D and E listed below.
- B. An explanation of any concerns, requested information or exceptions related to the Request for LOIs, Scope of Services or the Consulting Services Contract (attached as Appendix B).
- C. A completed, signed, and notarized Non-interest/Non-collusion Affidavit (see Appendix C attached hereto; see also, Ethics Policy attached as Appendix D which is referenced in the affidavit).
- D. Completed and Signed Disclosure and Acknowledgement Governing the Expenditure of Public Funds on Offshore Services (see Appendix E attached hereto).
- E. Completed Small Business Enterprise ("SBE") Utilization Certification and Plan demonstrating the commitment and means for achieving SBE participation on the Respondent's team (see Appendix F attached hereto). If the Certification and Plan fails to meet or exceed the **5% Goal**, the Respondent is required to demonstrate that it used Good Faith Efforts to attain SBE participation that meets or exceeds the Goal. As described in Appendix F, the Commission recognizes SBEs that are certified with the Commission or ODOT as SBE and considers DBEs certified with ODOT and firms certified as EDGE through DAS as eligible for SBE certification. Contact the Commission's Office of Equity and Inclusion with any questions concerning the SBE Program.

PART VI. INQUIRY SUBMISSION INSTRUCTIONS

All interested parties are welcome to submit specific questions or requests for clarifications of the LOI requirements. Respondents are expected to raise any questions, exceptions, or additions they have concerning the LOI prior to the end of the Inquiry Period indicated on the cover page. These questions shall be addressed in writing and **emailed to purchasing@ohioturnpike.org**. **Do not contact the Commission by phone. Do not direct questions regarding the Request for LOIs to anyone other than through the email address provided.** At the completion of the Inquiry Period, a summary of all questions and answers will be compiled, posted on the Commission's website (<https://www.ohioturnpike.org/business/doing-business-with-us/rfps>), and provided via email to the interested parties on file. In the event that it becomes necessary to provide additional clarifying data or information or to revise any part of this Request for Letters of Interest, addenda will be posted publicly (at the same link as answers) and provided directly to all recipients of this Request for Letters of Interest.

PART VII. LOI SUBMISSION INSTRUCTIONS

Respondents must timely submit its Letters of Interest electronically to purchasing@ohioturnpike.org in pdf format by the deadline specified on the cover page of this Request for Letters of Interest. Paper copies received will be considered non-responsive.

PART VIII. EVALUATION OF LOIs

The Commission will form an Evaluation Team consisting of members of the Commission Engineering staff to review the Letters of Interest. Respondents may be required to make a presentation to the Evaluation Team. A Consulting Services Contract will be awarded, if any award be made, to the Respondent determined to be the most qualified to perform the required services. In determining whether a Respondent is responsive, the Commission will consider the Respondent's experience, conduct and performance on previous contracts (if any) and ability to execute the Contract properly. Factors that may be considered by the Commission are:

- ~~A. Statement of the Respondent's understanding of the Scope of Work and Technical Approach to the Project, full elaboration on tasks and subtasks required for successful completion, and innovation in its approach to the Project. Its capabilities to meet the requirements of the Request for Letters of Interest and its means and approach to performing the services described in Appendix A. [50] points~~
- ~~B. The Respondent's skills, reputation, experience, capabilities, and expertise in performing the required services. Project Management and Team organization, including strength, qualifications and experience of organization, project manager and key staff personnel, quality control processes, amount self performed, and subcontractor' qualifications. [35] points~~
- ~~C. Accessibility of Respondent's personnel to Commission staff, proximity to the project, and past performance with the Commission and for former and current clients, and experience with other public and governmental entities. [15] points~~
- A. Competence to perform the required professional design services as indicated by the technical training, education, and experience of the firm's personnel, especially the technical training, education, and experience of the employees within the firm who would be assigned to perform the services;
- B. Ability of the responding firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required professional design services or design-build services competently and expeditiously;
- C. Past performance of the responding firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines;
- D. Any other relevant factors as determined by the Commission, including but not limited to ~~C~~ompletion and submission of all items required under this Request for Letters of Interest, and any exceptions or requested deviations; ~~and~~
- E. ~~C~~ommitting to a plan for meeting or exceeding the SBE Goal or satisfactorily demonstrating use of Good Faith Efforts to attain SBE certified firms' participation on the Project – pass/fail.
- D.F. Disclosure of any conflict of interest – pass/fail.

Following the ranking of the Letters of Interest submitted, a "Scope of Services" meeting will be held with the top-ranked Respondent to ensure the Respondent's understanding of the contract requirements and fee negotiations may commence. Following this meeting, the Respondent shall submit to the

Commission its proposed hourly billing rates and classifications for all permanent employees in accordance with the Ohio Turnpike and Infrastructure Commission Professional Services Method of Compensation – Hourly Billing FY 2021 Summary, and a fee proposal for all tasks defined at the Scope of Services meeting. The top-ranked Respondent’s fee will be compared to the Commission’s estimates. If necessary, the Commission will attempt to negotiate a mutually acceptable fee. If those negotiations are unsuccessful, the process will be repeated with the Respondent that submitted the next ranked Letter of Interest. Following successful negotiations, ~~a contract an Agreement (see Appendix B for form of Contract)~~ will be entered into based on ~~further refinement of~~ the Scope of Services. Furthermore, ~~please be advised it is not the intent of the Commission will not agree to pay or reimburse for the successful Respondent’s travel time and mileage to and from the work site, nor overnight lodging and/or per diems in connection with providing those services as set forth in the Scope of Services. to authorize per diems, but it is the Commission’s expectation that local personnel will be proposed and utilized for the Project.~~

PART IX. OFFICE OF EQUITY AND INCLUSION

The Commission adopted its Small, Minority Business Inclusion Program in 2016 to ensure that businesses certified as a Small Business Enterprise (SBE), Minority Business Enterprise (MBE), and/or Disadvantaged Business Enterprise (LDBEs) have the fullest possible opportunity to participate in contracts involving the expenditure of Commission funds. The program is administered by the Commission’s Office of Equity and Inclusion (OEI), which reviews each proposed contract and determines if opportunities exist and if so, applies a goal to the proposed contract. In some cases, no goal is applied to a proposed contract due to a lack of opportunity and availability of certified businesses.

The Commission’s Office of Equity and Inclusion Standards and Practice Manual for the Small, Minority and Disadvantaged Business Inclusion Program is available on the Commission’s website at <https://www.ohioturnpike.org/business/oei>.

When a goal is identified in an LOI, the respondent must submit the documentation provided by the Commission to show how the respondent will meet the goal. When the goal is waived, the program standards still require respondents to use “good faith efforts” or necessary and reasonable actions that would reasonably be expected to attain SBE or MBE or LDBE participation in the respondent’s performance of the scope of work.

Additionally, whether the Commission applies a goal to a proposed contract or not, the program standards provide that the Commission may apply an evaluation credit of five percent (5%) to the total points awarded for responses received from SBEs, or MBEs and LDBEs consultants to perform the personal or professional services set forth in the Scope of Services. The Commission may apply this credit in the evaluation process for responses submitted in response to this LOI No. 5-2021.

For questions about the Commission’s Small, Minority and Disadvantaged Business Inclusion Program, please visit the Commission’s website at <https://www.ohioturnpike.org/business/oei>.

PART X. DEVIATIONS, EXCEPTIONS AND ADDENDA TO REQUEST FOR LOIs

Respondents should raise any questions, exceptions or requested changes they have concerning the Request for LOIs during the Inquiry Period. If a Respondent discovers any ambiguity, error, conflict, discrepancy, omission or other deficiency in this Request for LOIs, that Respondent should immediately notify the Commission of such error and request modification or clarification of the Request for LOIs in accordance with the procedures outlined in PART VI. In the event that it becomes necessary to provide

additional clarifying data or information or to revise any part of this Request for LOIs, addenda will be issued and posted on the Commission's website (<https://www.ohioturnpike.org/business/doing-business-with-us/rfps>) to modify the necessary provisions of the Request for LOIs.

Respondents should specify in the Proposals whether they take exception to any of the Scope of Services or the Consulting Services Contract. If a Respondent fails to notify the Commission of a known error in the Request for LOIs, and a Consulting Services Contract is awarded to that Respondent, that Consultant shall not be entitled to additional compensation or time by reason of the error or its later correction.

The Commission reserves the right to make changes to the scope of this Request for LOIs and to clarify any of the requirements, information and/or provisions of this Request for LOIs as it deems necessary. Any changes to the Request for LOIs will be made via addenda issued prior to the submission deadline. The Commission further reserves the right, if necessary, to extend the submission deadline.

PART XI. LEGAL REQUIREMENTS

The Respondent is required to adhere to the rules and regulations promulgated by the Commission and the State of Ohio, and all terms and conditions set forth in this Request for LOIs. Additionally, the Respondent agrees to the following:

- A. A Respondent may withdraw or modify its proposal only if notice of such withdrawal or modification is prior to the Letter of Interest due date as identified on the front cover of this Request for LOIs.
- B. Once opened, the Respondent agrees that its Letter of Interest cannot be altered, modified, or withdrawn.
- C. By submitting a Letter of Interest, the Respondent acknowledges it has read this Request for LOIs, understands it, and agrees to be bound by the terms and conditions set forth herein.
- D. The Commission is not responsible for the accuracy of any information regarding this Request for LOIs that was gathered through a source other than the Commission's website or the inquiry process described above.

The Commission reserves the right to:

- A. Reject any and all Letters of Interest in whole or in part;
- B. Require any Respondent to submit additional written or oral clarification of their Letter of Interest and to meet with any, but not necessarily all, of the Respondents to obtain additional information and/or clarification and/or to negotiate terms of any Letter of Interest submitted;
- C. May consider financial information other than any financial information required by this Request for Letters of Interest (if any) as part of the evaluation process, including but not limited to credit reports from third-party reporting agencies.
- D. Enter into a Contract with the Consultant on the basis of the Letter of Interest submitted, without written or oral modifications thereto; and

- E. Waive minor irregularities noted in a Letter of Interest when in the best interest of the Commission.

Under no circumstances will the Commission be responsible for any costs incurred by any Respondent in submitting a Letter of Interest.

PART XII. INQUIRY AND LOI SUBMISSION INSTRUCTIONS

Respondents must timely submit one electronic version of its Letter of Interest electronically to purchasing@ohioturnpike.org in pdf format before the deadline specified on the cover page of this RFP.

PART XIII. ONLINE NOTARY PUBLIC SERVICES

The Commission has the capability to provide online notary public services which are available to any respondent without access to a notary public for documents that must be notarized and submitted with a bid. Please allow at least 3 business days to process any request for online notary public services. Requesting party must have computer internet access and a webcam. Please contact the Commission at purchasing@ohioturnpike.org for online notary public information and services.

PART XIV. APPEAL PROCESS

Any aggrieved Respondent desiring to challenge the award of a contract as a result of this Request for Letters of Interest must state its complaint in writing, through electronic submission in pdf format to purchasing@ohioturnpike.org within five (5) calendar days of notification of the contract award. Upon receipt of a timely challenge, one or more representative(s) of the Commission shall meet with the protesting party to hear its objections. ORC Chapter 119 shall not be applicable to such meeting. No final award shall be made until the Commission either affirms or reverses its earlier determination for such contract award.

APPENDIX B

CONTRACT FOR CONSTRUCTION ADMINISTRATION AND PROTECTIVE COATINGS INSPECTION SERVICES

for Project No. 40-20-01

This Contract, entered into as of the last date of the signature below, is between the **Ohio Turnpike and Infrastructure Commission**, a body corporate and politic constituting an instrumentality of the State of Ohio, located at 682 Prospect Street, Berea, Ohio 44017 (the “Commission”), through its Executive Director under the authority of Section 5537.04(A)(12), Article V, Section 1.00 of its Code of Bylaws, and Resolution No. _____, adopted _____, 2020, and [**Consultant**], an Ohio [*corporation, limited liability company, etc.*], located at [*insert address*] (“Consultant”), through its authorized representative.

This Contract pertains to the following:

Project No. 40-20-01

Bridge Repainting

Ohio Turnpike over Black River - M.P. 145.9;

Ohio Turnpike over Norfolk Southern Railroad - M.P. 147.9; Ohio Turnpike over

Cleveland Street (U.S. 20/S.R. 113) - M.P. 148.0,

Lorain County, Ohio (the “Project”)

RECITALS

WHEREAS, on _____, 2021, the Commission issued Request for Letters of Interest No. 5-2021 (“Request for LOIs”) to select a consultant to provide construction administration and protective coatings inspection services needed for the Project;

WHEREAS, the Consultant submitted a Letter of Interest dated _____, 2021 to perform the necessary professional consulting services described in the Request for LOIs; and

WHEREAS, the Commission’s Engineering staff reviewed the Letters of Interest received to perform the consulting services for the Project, and among those submitting letters of interest, determined that the Consultant was the most qualified firm to perform the necessary professional consulting services;

WHEREAS, on _____, 2021 the Consultant submitted a fee proposal to perform the necessary professional consulting services required for the Project (the “Fee Proposal”);

WHEREAS, the Commission’s Engineering staff reviewed the fee proposal and deemed it reasonable and appropriate;

WHEREAS, the Executive Director approved the Chief Engineer’s recommendation to award this Contract to Consultant; and,

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WHEREAS, the Commission authorized the award of the Contract to Consultant under Resolution No. _____, adopted _____, 2021.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Commission agrees to pay for, and the Consultant agrees to provide the professional services identified herein on the terms and conditions set forth below.

ARTICLE 1 GOVERNING DOCUMENTS

1.1 Contract Documents. The documents that comprise this Contract include this Contract, the Consultant's Fee Proposal, dated _____ (attached hereto as Exhibit A) and the Final Project Scope, if any (attached hereto as Exhibit B) (the "Contract Documents"). In the event of a conflict, the terms and conditions of this Contract control.

1.2 Designated Personnel. Prior to performing any services, the Consultant shall provide to the Commission for approval a list of personnel designated to perform the services along with their resumes and certifications, as required. Only those designated personnel may perform those services unless Consultant obtains the Commission's approval of any substitutions or additions in advance of any change.

1.3 Specifications.

1.3.1 Unless otherwise instructed in writing, any inspection, test or sampling to be performed by the Consultant, shall be in accordance with the Contract Documents of the Commission's Public Improvement Contract, as well as the Specifications for the inspection or testing as most recently published by the American Society for Testing Materials ("ASTM"), the American Association of State Highway and Transportation Officials ("AASHTO"), or the current edition of the State of Ohio Department of Transportation ("ODOT") manual entitled, Construction and Material Specifications, whichever is applicable, unless other standards and requirements are applicable, in which case the current publications containing such standards or specifications shall be followed.

1.3.2 If assigned to perform inspection services, the Consultant shall inspect the work of each contractor for Defective Work in accordance with the duties and responsibilities described in the Contract Documents of the Commission's Public Improvement Contract, which is incorporated by reference into any assignment issued to the Consultant for inspection services. If, through inspection or otherwise, the Consultant shall become aware of any Defective Work on the Project, the Consultant shall report all Defective Work to the Commission, together with recommendations for the correction thereof. Upon completion of any inspection services assigned to the Consultant, it shall provide certification, in writing, to the Commission that the inspections were completed in strict accordance with the specifications set forth in the Contract Documents for that particular project. Such certification shall be on behalf of both the Consultant as an entity and the individual inspector assigned to perform the inspection services.

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ARTICLE 2 TERM, CONTRACT FEES AND PAYMENT

- 2.1 Term.** This Contract shall become effective upon the last date written below and, subject to the termination provisions of this Contract, continue to be in full force and effect until the work required under the Contract is completed by the Consultant to the satisfaction of the Commission.
- 2.2 Contract Fee.** The Commission shall pay the Consultant for its proper performance under this Contract an amount up to the not-to-exceed amount of \$ *[insert]* as set forth in Exhibit A, to perform the services. The Commission may amend the Contract in writing, prior to the performance of any modified or additional work, in order to incorporate additional Fee Proposals as sought by the Commission. Should the Commission authorize an amendment of this Contract for the performance of any additional services on this Project, any unexpended funds allocated for compensation to the Consultant for a phase within the Project shall not be allocated or added to the not-to-exceed amount established for the performance of any other phases or services. The Commission will not pay for travel time to and from the work site.
- 2.3 Billing Rates.** The Commission shall compensate the Consultant based upon the actual effort expended performing the necessary services and Approved Billing Rates derived from actual wage rates, overhead rate and fixed fee using the following formula:

Billing Rate = [Hourly Rate + (Hourly Rate)(Approved Overhead Rate)] x 1.10 with the following definitions:

- 2.3.1 Hourly Rates.** Hourly Rates shall mean the direct cost of salaries and/or wages of the personnel of the Consultant, as applicable, including professional, technical, management, administrative and clerical employees, and principals engaged on the Project as related to their time devoted to the Project. All hourly rates are subject to the approval of the Commission's Chief Engineer. The Commission also reserves the right to "cap" the hourly billing rates for any individual assigned to a project in accordance with the document entitled Ohio Turnpike and Infrastructure Commission Professional Services Method of Compensation – Hourly Billing FY 2021 Summary. (Attachment G of the 2021-2022 Biennial Request for Qualifications) This document will be updated annually.
- 2.3.2 Approved Overhead Rate.** The Consultant's overhead rate shall be reviewed by the Commission in accordance with the ODOT Consultant Audit Guide. The overhead rate for this Contract shall be approved by the Chief Engineer but shall not exceed 160.00%. The rate may only be amended by mutual agreement of the parties in writing.
- 2.3.3 Fee.** The Consultant shall be entitled to receive a profit as a part of the Approved Billing Rate described in Subsection 2.3.4 below attributable to the approved

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personnel on the Project. The profit allowance shall be ten percent (10%), and thus the profit multiplier for any given assignment will be 1.10.

2.3.4 Billing Rate Approval. The Consultant, prior to beginning work on the Project, must submit and obtain written approval from the Commission of the Billing Rate for each individual it expects to work on the Project, including their job classification. Prior to assignment of any new personnel to the Project, the proposed Billing Rates and résumés must be submitted for prior written approval by the Commission. Overtime rates will only be paid as approved by the Commission. The Commission reserves the right to cap billing rates for any personnel assigned to the Project. The Consultant shall invoice its personnel expenses based on its Approved Billing Rates. Compensation for any services not specifically provided for shall be determined by prior agreement between the Executive Director or the Chief Engineer of the Commission and the Consultant; otherwise the Commission agrees to compensate the Consultant in accordance with rates submitted. The schedule of rates include all overhead costs except as hereinafter modified. Overtime must have prior approval of the Executive Director or the Chief Engineer of the Commission. Overtime rates will only be in effect after 40 (forty) hours of regular time is worked unless this provision is in conflict with other labor agreements to which the Consultant is a party. The time period for the assessment of regular time shall be from Monday through Friday of a standard work week, and for purposes of overtime, said personnel must have worked on the assigned Turnpike project or at another Ohio Turnpike location on another Commission project. Time in excess of forty (40) hours for this period as well as Saturday and Sunday will be considered as overtime.

2.4 Reimbursable Expenses. No extra charges will be assessed for preparation of invoices, computer time, travel time to and from the job site, or for incidental material, services or equipment, except as hereinafter provided. The Commission agrees to pay the actual costs of telephone, ~~telegraph~~, printing, postage and other similar incidental expenses incurred by the Consultant in connection with any services performed pursuant to this Contract when such expenses are fully documented. In the event that specialized materials or equipment is required, they shall be provided by the Consultant at the expense of the Commission provided that the Chief Engineer has given prior approval to such expenditure.

2.4.1 Vehicles. The Commission also agrees to reimburse the Consultant for the use of Consultant's vehicles (or vehicles of Consultant's employees) at the rate the Consultant reimburses its employees, when such vehicles are used pursuant to this Contract, up to the current IRS mileage allowance rate. Mileage to and from the work site shall not be reimbursed. ~~only be reimbursed for the number of miles traveled which exceed the number of miles normally traveled by the Consultant's employee from home to the Consultant's office. The Consultant must certify to the Commission's Chief Engineer the number of miles between the Consultant's office and the home of each employee who will work on the Project. The Consultant shall also certify the number of miles that each employee will travel from home to the nearest portion of the Turnpike job site. Such certification will be used to calculate~~

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~~approved mileage charges and authorization for overnight lodging.~~ The foregoing notwithstanding, the approved mileage charges shall not exceed \$43.00 per day per vehicle, unless previously authorized in writing by the Chief Engineer. Furthermore, mileage logs shall be completed daily by the Consultant's employees and submitted with monthly invoices as supporting documentation for mileage reimbursement. If mileage logs are not completed daily, no reimbursement will be made.

2.4.2 Toll Free Access. The Consultant and its employees shall have toll-free passage on the Ohio Turnpike in performing work pursuant to this Contract. However, such toll-free passage shall be strictly prohibited for any personal use by the Consultant's employees. Non-Revenue transponders will be issued to the Consultant upon the submittal of a written request for the requested number of transponders. These transponders are for assigned project use only and it shall be the responsibility of the Consultant to manage and monitor the proper usage of these transponders. The Commission will audit these transponders on a regular basis and should unauthorized activity be detected, the authorization for non-revenue privilege may be revoked. These transponders shall be returned at the completion of the assignment. Should the Consultant return less than the number of transponders issued, there shall be a charge of \$100.00 per transponder for each one not returned.

2.4.3 Meals and Lodging. During performance of said professional services, overnight lodging will be provided for Consultant's employees only when ~~the distance from the home office or employee's home, whichever is further, to the nearest portion of the job site exceeds 100 miles, or when~~ it is deemed advantageous to the assignment, and prior approval in writing is granted by the Commission's Executive Director or Chief Engineer. In the event said overnight lodging has been approved by the Executive Director or the Chief Engineer, the cost of meals and lodging shall be reimbursed at a rate the Consultant reimburses its employees, but not in amounts that exceed the Federal CONUS (Continental United States) rates established by the Federal Government and published at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. CONUS rates will dictate the maximum reimbursement a traveler will receive for lodging and meals (excluding incidentals) by city. Travel reimbursement is based on the location of the work activities and not the accommodations. The location of the work activities shall be the city/county where a majority of the work is being performed for the Project. Reimbursement for lodging and meals (excluding taxes) will be provided on an actual costs basis up to the maximum CONUS rates. Documentation of actual expenditures for lodging and meals is required. For meals, the per diem rates may be used for reimbursement with verification of travel status – refer to the CONUS rules concerning partial days. The Commission agrees to reimburse the Consultant for meals up to the maximum CONUS per diem rates, or at the actual rate the Consultant reimburses its employees, whichever is less.

2.5 Reporting. The Consultant shall provide, and shall require all sub-consultants to provide, any requested data to determine compliance with the representations made in the approved

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SBE Participation Certification, Utilization Plan, Demonstration of Good Faith Efforts and Statements of Intent to Contract and Perform for each invoice through the Commission's online diversity compliance portal: <https://ohioturnpike.diversitycompliance.com/Default.asp>. The Consultant and all sub-consultants shall timely submit all required data prior to any reasonable due dates, and to check the online diversity compliance portal on a regular basis to manage contact information and contract records. The Consultant shall require all sub-consultants to have completed all requested items and maintain contact information on record that is accurate and up to date. The Consultant shall include these disclosure and reporting requirements in all subcontracts under the Contract and further require that all subcontractors place the same obligation in each of their lower tier contracts. The Commission may require additional information related to compliance at any time before, during, or after contract award.

- 2.6 Taxes.** The Commission is a tax-exempt entity and will provide the Consultant a copy of the Commission's tax exemption certificate.
- 2.7 Invoices and Payment.** The Consultant shall submit invoices no more frequently than once a month in a form agreeable to the Commission. The Consultant shall render its invoices to the Commission on or about the 10th day of the month after any such services are performed. Undisputed invoices shall be due and payable by the Commission within thirty (30) days from the date of receipt thereof. Invoices for any other amounts will be submitted to the Commission as the amounts come due. For any services performed on a time and materials basis, the invoice will also state the total number of hours worked by each individual performing services during the preceding month. Invoices shall be accompanied by such supporting documentation as required by the Commission. The Commission may withhold payment for services that have not been properly performed or completed, and shall not be responsible for cost overruns incurred by the Consultant due to errors and omissions by the Consultant made during the performance of its services on any Turnpike project.
- 2.8 Audit.** The Consultant shall keep full and detailed records and accounts related to its rates, fee and reimbursable expenses and exercise such controls as may be necessary for proper financial management and to substantiate all costs incurred by implementing the accounting and control systems generally followed by consultants in the area or projects similar in nature. The accounting and control systems shall be satisfactory to the Commission. The Commission and the Commission's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Consultant's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Consultant shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

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ARTICLE 3 TIME FOR COMPLETION

- 3.1 Time for Completion.** Time is the essence of this Contract. The Consultant is to complete its work [*describe*], unless the Chief Engineer grants a request for an extension from the Consultant. Such extension request must be made in writing to the Chief Engineer no later than seven (7) days following the date upon which any event occurs that gives rise to the need for additional time. The extension request must include a description of the event, the reasons why that event justifies an extension, the duration of the extension sought, and any other documentation requested by the Chief Engineer.
- 3.2 Authorization to Proceed.** The Consultant is to proceed with the required services upon the execution of this Contract.

ARTICLE 4 THIRD PARTIES

- 4.1 Assignment.** Consultant may not assign, transfer, convey or otherwise transfer or dispose of its rights, title, interest in, or its duty to perform or supervise the performance of any of its obligations hereunder, to any other person, company, corporation or entity without the prior written approval of the Commission. Any purported assignment in violation of the preceding sentence will be void. Any approved assignment shall not relieve the Consultant from any of its responsibilities under the Contract or imply a willingness on the part of the Commission to give any subsequent or other consent, nor stop the Commission from refusing same; nor shall any such consent confer upon any assignee or transferee any right to assign or transfer any rights conferred upon such transferee.
- 4.2 Subcontracting.** The Consultant shall not sublet or subcontract, nor shall any approved sub-consultant commence performance of, any part of the work or services included in this Contract without the previous written approval of the Commission. Subcontracting, if permitted, shall not relieve the Consultant of any of its obligations under this Contract. The Consultant shall be and remain solely responsible to the Commission for the acts or faults of any sub-consultant and of such sub-consultant's officers, agents and employees, each of whom shall for this purpose, be considered an agent or employee of the Consultant to the extent of its subcontract. The Consultant shall file a conformed copy of the applicable subcontract with the Commission. The Consultant and any sub-consultant shall jointly and severally agree that the Commission is not obligated to pay or to be liable for the payment of any sums due any sub-consultant. References to the Consultant in this Contract include authorized sub-consultants of the Consultant.
- 4.3 Waiver of Defense.** The Consultant acknowledges and agrees it will not raise a third-party liability defense, and waives such defense, as to any claim, suit or action brought against the Consultant or Commission arising from Consultant's performance under the Contract, except where the claim, suit or action is based upon facts that occurred after an assignment

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or transfer of the entire Contract, which was consented to by the Commission in writing as required by Section 4.1 above.

- 4.4 Beneficiaries.** There are no intended third-party beneficiaries of any provision of this Contract.
- 4.5 Independent Contractor.** The Consultant is an independent contractor for all purposes under this Contract. This is not an agreement of partnership or employment of the Consultant or any of the Consultant's employees by the Commission for the purpose of the Public Employees Retirement System ("PERS"), Workers' Compensation, or for any other purpose. The Consultant shall not pledge or attempt to pledge the credit of Commission or in any other way attempt to act on the Commission's behalf in an effort to bind the Commission to any additional agreements. The Consultant agrees to indemnify the Commission for any and all sums that are due and owing to the Internal Revenue Service (IRS) for withholding FICA and unemployment or other state and federal taxes. The Consultant further agrees to make such payments to the IRS and appropriate state authorities for withholding FICA and unemployment taxes.
- 4.6 Representations and Warranties.** The Consultant represents and warrants that: (1) so far as the Consultant knows, no member, employee, or agent of the Commission has any interest, either direct or indirect, in the Contract; (2) the Consultant has not employed or procured the employment of anyone to solicit or secure the Contract with the Commission other than those disclosed in the Proposal; and (3) the Consultant will fulfill the representations in its Small Business Utilization Certification and Plan submitted with its Letter of Interest, which the Commission relied upon in selecting the Consultant for contract award; and (4) all materials, including their use by the Commission in unaltered form, will not infringe any third party copyrights, patents or trade secrets that exist as of the date of this Contract and that arise or are enforceable under the laws of the United States of America. If the Commission shall hereafter determine that any of the foregoing representations is false, it may, upon written notice to the Consultant, immediately terminate the Contract and thereafter refuse to make payments thereunder, whether or not such payments are for Services already performed, and may also recover its damages, if any, for breach of warranty; or in the event such false representation was as to the existence of any agreement providing for a bonus, fee, commission, percentage, or other form of contingent compensation, the Commission may, in its discretion, elect to continue the Contract in force by deducting from the payments to be made thereunder to the Consultant the amount of such bonus, fee, commission, percentage, or other contingent payment.

ARTICLE 5 INDEMNIFICATION

- 5.1 Generally.** The Consultant shall defend, indemnify and hold harmless the Commission, its Commission members, Executive Director, officers and employees ("Indemnified Parties"), from and against any and all liability, including claims, demands, losses, damages, settlements, judgments, costs and expenses (including reasonable attorney's fees and any costs of defense) of every kind and description arising out of or in connection with,

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or occurring during the course of, performance of the Contract, whether directly or indirectly, including but not limited to where such liability is:

- 5.1.1 founded upon or grows out of, directly or indirectly, the acts, errors, omissions, undertakings, representations or warranties of the Consultant, its officers, employees, agents, independent consultants, or sub-consultants;
- 5.1.2 founded upon, or grows out of, directly or indirectly, the breach by Consultant of any term or condition of this Contract, including but not limited to the breach of any representations or warranties and in particular the breach of its express representation that it is an independent contractor and in compliance with all applicable laws related to work as an independent contractor; or,
- 5.1.3 founded upon claims of violation of United States patents, trademark, trade secrets, proprietary information, copyrights or other intellectual property rights in existence on the date of this Contract resulting from the Consultant's or the Commission's use of any equipment, software, technology, documentation, and/or data developed in connection with the services and products described in the Contract.

5.2 Application. Nothing herein contained shall require the Consultant to reimburse the Commission for acts or omissions caused by the sole negligence of the Commission. The Consultant shall waive and shall not assert any claim against the Commission for any injury to persons, whether or not resulting in death, or any loss or damage to property occurring from any cause unless such injury, loss or damage is due solely to the negligence of the Commission, its agents or employees.

- 5.2.1 If a regulatory body or court of competent jurisdiction finds that the Consultant is not an independent contractor or is not in compliance with applicable laws related to work as an independent contractor, based on the Consultant's own actions, the Consultant will assume full responsibility and liability for all taxes, assessments, and penalties imposed against the Consultant or the Commission resulting from that contrary interpretation, including taxes, assessments, and penalties that would have been deducted from the Consultant's earnings if the Consultant had been on the Commission's payroll and employed as a Commission employee.
- 5.2.2 If a third-party claim causes the Commission's quiet enjoyment or use of any product supplied by the Consultant to be seriously endangered or disrupted, or, should a court order be issued against the Commission restricting its use of any product and should the Consultant determine not to further appeal the claim issue, at the Commission's sole option, the Consultant shall provide at its sole expense, the following: Purchase for the Commission the rights to continue using the contested product(s); or Provide substitute products to the Commission which are, in the Commission's sole opinion, of equal or greater quality, or Refund all monies paid to the Consultant for the product(s) subject to the court action. The Consultant shall also pay to the Commission all reasonable related losses related to the product(s) and for all reasonable expenses related to the installation and conversion to the new product(s).

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- 5.2.3** Should the Commission elect to have the Consultant defend one or more of the Indemnified Parties, the Commission shall have the right, but not the obligation, to select the counsel that will provide that defense, to determine all points of control on behalf of the Commission, and to approve or disapprove of any settlement.
- 5.2.4** The indemnity obligations of the Consultant shall not be limited by the types, terms, conditions, or limits of liability of any insurance purchased and maintained by Consultant.
- 5.3** This agreement to defend, hold harmless and indemnify shall survive expiration or termination of this Contract.

ARTICLE 6 INSURANCE

- 6.1 General.** Except for the Consultant's indemnification obligations with respect to infringement, the Consultant shall, at its expense, at all times during the performance of services hereunder, and for a period of ten (10) years thereafter, maintain liability insurance insuring themselves against the indemnification obligations throughout the term of the Contract and claims arising from wrongful acts, negligent acts, errors or omissions of the Consultant, its employees, agents, sub-consultants, or any other representatives of the Consultant involved in the work. The Consultant shall name the Commission as an additional insured as set forth in more detail below and shall be responsible for any retentions or deductibles due under the policies in the event of a claim. The Consultant shall require its sub-consultants to obtain insurance and shall be responsible for enforcement of its sub-consultants' obligation to obtain insurance, at limits appropriate to the exposures of the sub-consultant's work to satisfy the requirements hereunder. The policies the Consultant and its sub-consultants maintain shall be with companies authorized to do business in Ohio and rated "A" or above by A.M. Best Company or equivalent and carry the following coverages and limits:
- 6.1.1** Comprehensive Commercial General Liability that includes the Commission as an additional insured for amount not less than \$1,000,000, including those resulting in death to any one person or persons and/or property damage arising from any one (1) accident and \$2,000,000 in the aggregate, including coverage for: property damage, premises operations, liability for independent consultants, products liability, valuable papers, contractual liability and personal injury. The policy or policies shall be primary and non-contributory, provide coverage for on-going and completed operations, and shall not contain a provision that eliminates coverage for damages arising out of the negligence of the additional insured.
- 6.1.2** Comprehensive Automobile Liability Insurance for bodily injury and property damage that includes the Commission as an additional insured for an amount not less than \$1,000,000 combined single limit. The policy or policies shall be primary

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and non-contributory and shall not contain a provision that eliminates coverage for damages arising out of the negligence of the additional insured.

- 6.1.3** Professional Liability Insurance for not less than \$5,000,000 for any one incident, and if not written on an occurrence basis, shall be maintained for a period of not less than two (2) years following the completion of the services under this Contract.
- 6.1.4** Umbrella/Excess Liability Insurance Policy over primary general liability and automobile liability following the same terms as the underlying policies and in an amount not less than \$5,000,000.
- 6.2** **Certificate of Insurance.** Upon execution of this Contract, the Consultant shall submit to the Commission a certificate(s) of insurance and related additional insured endorsements with respect to the required policies. If the additional insured endorsements required above are not available at the execution date, the Consultant shall submit to the Commission a notation of the endorsement together with either a binder or an advice with respect to such endorsement. The endorsement shall be submitted no later than thirty (30) days after the execution date hereof. The Consultant shall provide written notification to the Commission at least 30 days in advance of any cancellation or modification of the Consultant's insurance policy terms or coverage as set forth herein.
- 6.3** **Copy of Insurance Policy.** Upon the execution of this Contract, the Consultant shall provide a copy of the insurance policy or policies required under this Contract after redacting proprietary or confidential information if applicable.
- 6.4** **Workers' Compensation.** The Consultant shall also procure and maintain until the Contract has been fully and completely performed, Ohio Worker's Compensation Insurance covering all employees who engage in any work in connection with the performance of the Contract except employees hired in a state other than Ohio who will not engage in any work in the State of Ohio.
- 6.5** **Notice.** Within twenty-four (24) hours after the occurrence of any accident or other event that results in or might result in injury to the person or property of any person, which allegedly arises in any manner from the performance under the Contract or occurs in the area(s) for which the Consultant is responsible, the Consultant shall send written notice thereof to the Commission's General Counsel setting forth a full and precise statement of the facts pertaining thereto, and send a copy of any summons, subpoena, notice or other documents served upon or received by the Consultant, or any agent, employee or representative of the Consultant, arising in any manner from the performance of the Contract or any part thereof.

ARTICLE 7 PERFORMANCE AND SAFETY STANDARDS

- 7.1** The Consultant shall provide professional services as set forth in this Contract. The Consultant represents that it is properly licensed in the jurisdiction where the Project is

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located to provide the services required by this Contract or shall cause such services to be performed by appropriately licensed professionals.

- 7.2 The Consultant shall perform its services consistent with the professional skill and care ordinarily provided by Consultants practicing in the same or similar locality under the same or similar circumstances. The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.
- 7.3 The representative of the Commission that is authorized to act on behalf of the Commission with respect to the Project is the Chief Engineer. The representative authorized to act on behalf of the Consultant with respect to the Project is:

*[Name
Address
Address
Telephone
Fax
Email]*

- 7.4 **Reasonable Behavior.** Each party will act in good faith in the performance of its respective responsibilities under the Contract and will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required by the other party in order to perform its responsibilities under the Contract.
- 7.5 **Public Records Act.** The Consultant acknowledges that the Commission is required to respond to all Public Record requests under Ohio law. The Consultant shall comply with the Public Record Act in all respects and shall not restrict or otherwise inhibit the Commission from complying.
- 7.6 **Ownership of Materials.** Drawings, plans and other documents prepared by, or with the cooperation of, the Consultant pursuant to the Contract, including all copyrights, are works for hire under the United States Copyright Act and shall, upon payment therefore, become the property of the Commission, whether or not the project for which they are prepared is commenced or completed. If for any reason the product of the Consultant's services hereunder are determined at any time not to be a work made for hire, the Consultant irrevocably transfers and assigns to the Commission all right, title and interest therein, including all copyrights, as well as all renewals and extensions thereto. Any materials prepared, created, produced by, or with the cooperation of, the Consultant pursuant to the Contract, including all copyrights, are the property of the Commission. The Consultant may retain copies, including reproducible copies of such drawings and other documents for information and reference. The Commission may use such drawings or other documents, or others employed by the Commission for reference in any completion, construction, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to a project, without additional compensation to the Consultant.

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7.7 Non-Collusion. The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Consultant further covenants that no person having any such interest shall be employed in the performance of this Contract.

7.8 Safety.

7.8.1 Consultant shall be responsible for the safety of its personnel related to and during the performance of Services required by this Contract and will take reasonable measures to ensure that it and its sub-consultants provide and maintain a safe working environment. Consultant shall ensure that its employees and the employees of its sub-consultants, before they begin and throughout their employment at any Project site, are made aware of the requirements of all applicable safety and health regulations including, but not limited to, Applicable Laws and are notified that compliance therewith is a condition of their continued employment. Consultant shall remove from the site any employees or sub-consultants that fail to abide by applicable health and safety regulations. Consultant shall not knowingly permit a hazardous, unsafe, unhealthy, or environmentally unsound condition or activity to be conducted at any Project site.

7.8.2 If Consultant becomes aware of any hazardous, unsafe, unhealthy or environmentally unsound condition at any Project site, it shall notify the Commission and take reasonable steps to eliminate, terminate, abate or rectify any condition over which Consultant has control. The Commission may, but is not obligated to, inspect at reasonable times, the Project site and Consultant's facilities and appropriate Project records to ascertain Consultant's and its sub-consultants' compliance with the requirements of this Contract; provided however, neither the existence nor exercise of such right will relieve Consultant of its responsibility for its own and its sub-consultants' compliance with this Contract, to always use due care in the performance of services and for fulfilling all of its other obligations hereunder with respect to health and safety.

7.8.3 Consultant shall promptly notify the Commission of any injury, death, loss or damage to persons, animals, or property, which is in any way related to Services performed under the Contract, even though such occurrence was not caused or consented to by Consultant, its employees, sub-consultants or agents. Smoking is prohibited at the Project site. Consultant shall monitor the Commission's no smoking rule with respect to its employees and sub-consultants while they are working at the Project site.

ARTICLE 8 SUSPENSION, DEFAULT, AND TERMINATION

8.1 Suspension. The Commission may at any time prior to completion of the Contract temporarily suspend any Contract when it is determined to be in the Commission's interest. Such suspension shall be provided by written notice. If such Suspension is not lifted within

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120 days from the notice of Suspension, the Consultant may request that the Contract be terminated.

8.2 Default. Each of the following shall constitute an event of default by the Consultant:

8.2.1 If the Consultant becomes insolvent, makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property;

8.2.2 If by order or decree of a court, the Consultant is adjudged bankrupt or an order is made approving a petition filed by any creditors or, if the Consultant is a corporation, by any of the stockholders of the Consultant, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or any law or statute of the United States or of any state thereof;

8.2.3 If a petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against the Consultant and is not dismissed within ninety (90) days after the filing thereof;

8.2.4 If any lien is filed against the Commission's property because of any act or omission of the Consultant and is not released or discharged by obtaining a bond at Consultant sole expense and cost within twenty (20) days;

8.2.5 If the Consultant voluntarily abandons, deserts, vacates, or discontinues its operations;

8.2.6 If the Consultant fails duly and punctually to pay any monies required hereunder within twenty (20) days after written notice;

8.2.7 If the Consultant fails to keep, perform and observe any promise set forth herein on its part to be kept, performed or observed within five (5) days after receipt of notice of default from the Commission, except where fulfillment of its obligation requires activity over a period of time and Consultant has commenced whatever may be required to cure the failure to the satisfaction of the Commission within five (5) days after notice and continues such performance without interruption.

8.3 Remedies for Default. Upon occurrence of any Default or any time thereafter during the continuance thereof, the Commission may, at its option, exercise concurrently or successively any one or more of the following rights and remedies:

8.3.1 Upon five (5) days' notice, terminate this Contract.

8.3.2 Without waiving any default, pay any sum required to be paid by the Consultant to others than the Consultant and which the Consultant has failed to pay, and perform any obligation required to be performed by the Consultant hereunder, and any amounts to paid or expended by the Commission in fulfilling the obligations of

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Consultant hereunder, including all interest, costs, damages, attorneys' fees and penalties, shall be repaid by the Consultant to the Commission on demand with interest thereon at the rate of twelve percent (12%) per annum from the date of such payment or expenditure plus a twenty percent (20%) administrative fee.

8.3.3 Invoke the dispute resolution provisions of this Contract.

8.4 Convenience Termination. In addition to the termination upon five (5) days' notice after an occurrence of default as provided above, the Commission may unilaterally terminate the Contract at any time for any reason by giving thirty (30) calendar days prior written notice to the Consultant. If the Commission unilaterally terminates the Contract pursuant to this Section, the Consultant shall be paid all amounts due up to the termination date. The Commission and the Consultant may also mutually agree to terminate this Contract in writing.

8.5 Waiver. No waiver by the Commission at any time of any of the terms or conditions of this Contract shall be deemed or taken as a waiver at any time thereafter of the same or any other term or condition herein or of the strict and prompt performance thereof. No delay, failure or omission of the Commission to exercise any right, power, privilege or option arising from any default, or subsequent payment then or thereafter accrued shall impair or be construed to impair any such right, power, privilege or option to waive any such default or relinquishment thereof, or acquiescence therein and no notice by the Commission shall be required to restore or revive any option, right, power, remedy or privilege after waiver by the Commission of default in one or more instances. No waiver shall be valid against the Commission unless reduced to writing and signed by an officer of the Commission duly empowered to execute same.

8.6 Force Majeure. Neither party shall have liability to the other if it becomes unable to timely perform its obligations under this Contract due to labor disputes, fire, acts of God, tornados, flood, hurricane, earthquake, tidal wave, blizzard, or other natural disasters, acts of the state or federal government in their sovereign capacity, riots, civil commotion, quarantine restrictions, war, terrorism, incidence of disease or other illness that reaches outbreak, epidemic or pandemic proportions, unavoidable casualties, or other causes beyond their control.

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ARTICLE 9 NON-DISCRIMINATION

- 9.1 Non-discrimination:** The Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, low-income status, or limited English proficiency in the selection and retention of sub-consultants, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by applicable federal, state, and local laws.
- 9.2 Solicitations of Sub-consultants, including procurement of materials and equipment:** In all solicitations, either by competitive bidding or negotiation, made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, the Consultant will notify each potential sub-consultant or supplier of the Consultant's obligations under this Contract. The Consultant shall also include the provisions of this Article 9 in every sub-consulting agreement, subcontract, purchase order, lease or other such document.

ARTICLE 10 LAW AND DISPUTES

- 10.1 Choice of Law.** The Contract shall be subject to the laws of the State of Ohio. All duties of either party shall be deemed performable and performed in the State of Ohio.
- 10.2 Informal Dispute Resolution.** At the written request of either party, the parties will attempt to resolve any dispute arising under, or relating to, the Contract through the informal means. Each party will appoint a senior management representative who does not devote substantially all of his or her time to performance under the Contract. The representatives will furnish to each other all non-privileged information with respect to the dispute that the parties believe to be appropriate and germane. The representatives will negotiate in an effort to resolve the dispute without the necessity of any formal proceeding.
- 10.3 Mediation.** If the parties do not resolve their differences through Informal Dispute Resolution, the Commission may, at its sole discretion and election, choose to proceed with mediation governed by the most recently published Construction Arbitration Rules and Mediation Procedures of the American Arbitration Association, and the Consultant hereby agrees to engage in that process in accordance with those rules and procedures. The parties shall have 90-days from the date that a party serves notice of its claim on the other party to attempt to resolve their differences through mediation.
- 10.4 Formal Dispute Resolution - Litigation.** If the parties do not resolve their differences through mediation, the dispute shall be resolved through litigation. Litigation may take place only in Cuyahoga County Court of Common Pleas or the United States District Court for the Northern District of Ohio.

ARTICLE 11

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GENERAL

11.1 Notices. All notices or communications required or permitted as a part of the Contract shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when:

11.1.1 Actually received, or

11.1.2 If not actually received, 3 days after transmittal through electronic mail receipt with a carbon copy sent through the United States Postal Service with proper postage affixed and addressed to the respective other party at the address set out below or such other address as the party may have designated by notice to the other party, or

11.1.3 Upon delivery by the Commission of the notice to a representative of the Consultant while on the Commission property.

The addresses of the parties to this Contract are as follows:

| In the case of the Commission: | with a copy to: |
|--|--|
| Ohio Turnpike and Infrastructure Commission Chief Engineer Attn: Anthony Yacobucci, P.E. 682 Prospect Street Berea, Ohio 44017 tony.yacobucci@ohioturnpike.org | Ohio Turnpike and Infrastructure Commission General Counsel Attn: Jennifer <u>L.</u> Stueber, Esq. 682 Prospect Street Berea, Ohio 44017 jennifer.stueber@ohioturnpike.org |
| In the case of the Consultant: | |
| <i>[Jane Smith Address Address Telephone Fax Email]</i> | |

11.2 Integration and Amendment. The Contract constitutes the entire agreement between the parties and supersedes all other prior or contemporaneous communications between the parties (whether written or oral), and all other communications relating to the subject matter of the Contract. The Contract may be modified or extended by formal amendment of the Contract signed by the parties and made a permanent part of the Contract.

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- 11.3 Severability.** The provisions of the Contract will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of the Contract, for any reason, is declared to be unenforceable, the parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the parties.
- 11.4 Publicity.** Neither party may use the name or any data, pictures, or other representation of the other party in connection with any advertising or publicity materials or activities without the prior written consent of the other party. However, the Consultant may include the Commission's name on its client list and may describe briefly, and in general terms, the nature of the work performed by the Consultant for the Commission. The parties further agree that, within a reasonable time following final acceptance, the parties may work toward developing a mutually agreeable statement for public use by the parties such as in marketing materials and in their reports to stockholders.
- 11.5 Video and Audio Recordings.** The Commission has the right to video and/or audiotape any and all meetings, whether held at a Commission site, Consultant site, or via teleconference.
- 11.6 Confidentiality.** If the Consultant or Commission receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person. The receiving party may disclose "confidential" or "business proprietary" information after seven (7) days' notice to the other party only when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this paragraph.
- 11.7 Severability.** The invalidity of any provision of the Contract shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.
- 11.8 Construction of this Contract.** All terms and words used in this Contract, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Contract or any paragraph or clause in the Contract may require, the same as if such words have been fully and properly written in the number and gender. Any act to be performed under the Contract by the "Commission" may be

APPENDIX B

performed by the Executive Director or by such of its employees or such other persons, corporations or firms as the Executive Director may designate. "Executive Director" when used herein, shall refer to the Executive Director of the Commission and include the Chief Engineer, the Deputy Executive Director and the CFO/Comptroller. The headings of Articles and Paragraphs, to the extent used herein, are for reference only, and in no way define, limit, or describe the scope or intent of any provision hereof.

11.9 Counterparts. This Contract may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

11.10 Authority. The undersigned signatory for the Consultant hereby represents and warrants that he or she has full and complete authority to execute the Contract on behalf of the Consultant. This representation and warranty is made for the purpose of inducing the Commission to execute the Contract.

11.11 Electronic Signatures. The parties agree that for purposes of facilitating the signing of this Contract, an electronic signature or an electronic or facsimile transmission of a signature shall be an original signature for all purposes.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the last date written below.

[CONSULTANT]

**OHIO TURNPIKE AND
INFRASTRUCTURE COMMISSION**

By: _____

By: _____

Ferzan M. Ahmed, P.E.
Executive Director

Printed: _____

Title: _____

Date: _____

Date: _____

APPROVED: _____

Jennifer L. Stueber, Esq.
General Counsel

APPENDIX B

**Exhibit A
Consultant's Fee Proposal**

APPENDIX B

**Exhibit B
Final Project Scope**