



**OHIO TURNPIKE AND
INFRASTRUCTURE COMMISSION**

ADDENDUM NO. 2
ISSUED OCTOBER 21, 2020

to

RFP NO. 6-2020
**REQUEST FOR PROPOSALS TO SELECT
A COMPANY TO PERFORM ROUTINE AND
INCIDENT BASED COVID-19 DECONTAMINATION SERVICES**

PROPOSAL DUE DATE: 5:00 P.M. (EASTERN TIME), OCTOBER 27, 2020

ATTENTION OF RESPONDENTS IS DIRECTED TO:
ANSWERS TO QUESTIONS RECEIVED THROUGH 10:00 AM ON OCTOBER 20, 2020

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

Jennifer L. Stueber, Esq.,
General Counsel

October 21, 2020

Date

ANSWERS TO QUESTIONS RECEIVED THROUGH 10:00 A.M. ON OCTOBER 20, 2020:

Q#2 Is there a Pre-Bid Meeting?

A#2 *Yes. Pre-Bid Meetings will be held as follows:*

- *Exit 180 Toll Plaza – October 22, 2020 at 1:00 p.m. – 2:00 p.m.*
- *Hiram Maintenance Building, MP 198.6 eastbound, 9196 State Route 700, Windham, OH 44288 – October 22, 2020 at 3:00 p.m. – 4:00 p.m.*

Attendees must at all times wear face coverings and maintain social distancing, a minimum of 6 feet between themselves and others.

Q#3 How is this cleaning going to relate to your current cleaning schedule and vendor? How is this cleaning going to enhance it?

A#3 *The Contractor services will be in addition to our current cleaning schedule and vendors. These Contractor services are intended specifically for COVID-19 disinfection and decontamination. Applicable departments will work with the Contractor to develop a schedule so that regular cleaning services do not overlap disinfecting.*

Q#4 Will we be required to pay tolls while performing this work?

A#4 *The Contractor and its employees will be provided with non-revenue transponders to access the Turnpike while performing the services required under the Contract, subject to new Section 8 of the Services Agreement. A revised Appendix C, Services Agreement, is issued with this Addendum No. 2.*

Q#5 Which method of decontamination are you looking for? (Spray & wipe, fogging or electrostatic spraying?)

A#5 *Due to the number and size of the facilities to be decontaminated and time sensitivity of shifts, the Contractor is required to hydrostatically and/or electrostatically apply the decontaminating solution.*

Q#6 Will this be completed while the facility is open?

A#6 *Yes. Many of the facilities remain open 24/7/365. However, some installations may be closed or have minimal employees depending on the time of day.*

Q#7 Or will you schedule a window for the facility to be closed when we are there?

A#7 *No. We will not be closing facilities. However, we will work with the Contractor to create a schedule that will work for the Contractor and Commission.*

Q#8 Appendix A DRAFT SCOPE OF SERVICE PAGE 4 UNDER DETAILED REQUIREMENTS ITEM 2 * Provide and utilize necessary Victory Hydrostatic disinfectant

application equipment or equivalent to perform decontamination services. VICTORY ONLY MAKES OR MANUFACTURES AN ELECTROSTATIC SPRAYERS.

A#8 The Contractor must provide Victory hydrostatic disinfectant application equipment or equivalent to perform decontamination services. Electrostatic application is also acceptable.

Q#9 Wage: IS THE RFP No. 6-2020 AT a PREVAILING RATE: IE... Decontamination Technician and Truck Driver. If so, would like to have Classification for both.

A#9 *Prevailing wage does not apply to this contract.*

Q#10 COVID-19 DISINFECTION AND DECONTAMINATION SERVICE AGREEMENT: UNDER 11. INSURANCE AS STATED: BWC, GLI, MVLI, EXCESS UMBRELLA, QUESTION: Broad form and umbrella do not cover COVID -19 Coverage. Legalities and Liabilities would fall on the STATE of OHIO for not having the proper insurance of COVID-19. (see below) Our pollution policy covers COVID-19 and CORONAVIRUS RELATED WORK as a named peril and covers us for 1,000,000. THIS IS FOR ACTIVE AND PRO-ACTIVE DECONTAMINATION.

A#10 *The Selected Contractor must provide certificates of insurance reflecting the types and limits of coverage set forth in the form Services Contract.*

Q#11 PERFORMANCE BOND: is to complete the work, YOUR RFP No. 6-2020 STATES IT A SERVICE TO FEE CONTRACT. * IS THE BOND EQUAL TO THE CONTRACT, HOW DID YOU ARRIVE AT 500,000 PREFORMANCE BOND.AND OR WILL THE BOND BE ISSUED FOR AT THE TIME AWARDED FOR THE AMOUNT EQUAL TO THE CONTRACT. (NOT SPECIFIED)

A#11 *A#11 The \$500,000 performance bond amount was provided for purposes of the RFP process only. At the time of contract award, the performance bond amount will be in the amount of the annual cost to the Commission based on the agreed contract price.*

Q#12 Is there a specific shift or time these sites would be made accessible for scheduling the decontamination work?

A#12 *In general, the Contractor will be able to access most facilities throughout the 24-hour period. The Commission will work with the Contractor to create a schedule.*

Q#13 In the Scope of Services, you mention pre-bid meetings at each type of representative facility, but no specifics have been provided. Can you elaborate?

A#13 *See response to Q#2.*

Q#14 Can we have a spreadsheet of option 1 and option 2.

A#14 See the revised pricing sheet issued with Addendum No. 1

Q#15 Will a toll pass be included?

A#15 The Contractor and its employees will be provided with non-revenue transponders to access the Turnpike while performing the services required under the Contract, subject to new Section 8 of the Services Agreement. A revised Appendix C, Services Agreement, is issued with this Addendum No. 2.

Q#16 What will be the start date?

A#16 The Contractor will begin as soon as practicable following the execution of a contract for services.

Q#17 Is there going to be daytime access allowed or is it night shift hours only?

A#17 In general, the Contractor will be able to access most facilities throughout the 24-hour period. The Commission will work with the Contractor to create a schedule.

Q#18 Who do we schedule Pre-Bid Meeting/Representative Facility site walks with and when will they be?

A#18 See response to Q#2.

Q#19 When does the work start for this contract?

A#19 The Contractor will begin as soon as practicable following the execution of a contract for services.

Q#20 Are service providers allowed to schedule the routine decontamination at our discretion?

A#20 No. The Commission will work with the Contractor to create a schedule.

Q#21 Who do we send the weekly activity report to?

A#21 The Contractor will be required to submit the weekly activity report to the Director of Administration.

Q#22 Which days and what are the hours that crews will have access to each location for routine decontamination? Do weekly cleanings have to fall between Monday and Friday or will they coordinating contacts be available on weekends also?

A#22 It is preferred that decontamination services are performed between Monday – Friday. However, the Commission will work with the Contractor to create a schedule.

Q#23 What are the Hours that service providers can provide services? Can this be our choice or does the TP provide best or preferred hours to access buildings, booths, etc.?

A#23 It is preferred that decontamination services are performed between Monday – Friday. However, the Commission will work with the Contractor to create a schedule. The schedule cannot be created solely by the Contractor.

Q#24 Can we expect any holiday cleanings e.g. for the administration bldgs. when occupancy is light? This will affect hourly rates if holiday services are required.

A#24 It is expected the Contractor will provide routine services for the Administration complex during holiday weeks, but not specifically on holidays. However, a call-out for emergency services may be required.

Q#25 Does the TP have disposal plans/requirements for waste generated from decontamination services? There is no mention or line item on the pricing sheet to cover waste disposal.

A#25 The required decontamination services should not generate waste to be disposed of.

Q#26 Will tolls be waved for the work crews?

A#26 The Contractor and its employees will be provided with non-revenue transponders to access the Turnpike while performing the services required under the Contract, subject to new Section 8 of the Services Agreement. A revised Appendix C, Services Agreement, is issued with this Addendum No. 2.

Q#27 Will Toll Booths be manned during decontamination services (or) call outs? If so, what specific procedures will be needed to coordinate how to manage toll booth cleanings?

A#27 Depending on the specific facility, toll booths may be occupied. The Commission will work with the Contractor to create a schedule so that employees will be removed during the disinfectant application process.

Q#28 Are rest stops and restaurants/food courts part of any of the line items in the scope of work?

A#28 No.

Q29 Are the public access areas also included? If so when will these be available for decontamination services?

A#29 There are no public access areas requiring decontamination services.

Q#30 For Section 11. - Insurance coverage, can the words “*not less than*” be removed from final contract? We can meet the levels stipulated, however, by providing “not less than” minimum insurance limits there is a floor to insurance coverage but no ceiling.

A#30 Any respondent that takes exception to *Appendix C, Services Agreement*, should submit those exceptions in writing with its proposal as explained in the RFP. If the top ranked respondent submitted written exceptions to the agreement, the Commission will attempt to negotiate those terms to the satisfaction of the parties. If those negotiations fail, the Commission reserves the right to enter into contract negotiations with the next ranked respondent.

Q#31 Will the Ohio Turnpike allow negotiations regarding indemnification and liability limitations section of contract?

A#31 See response to Q#30

Q#32 On the pricing sheet you show two admin buildings, but the specs only indicate one?

A#32 As cited in the Scope of Services, the Administrative Complex has two buildings requiring decontamination services.

Q#33 Should this contract include prevailing wage rates that should be applied and included in the proposal?

A#33 See response to Q#9.

END OF ADDENDUM NO. 2

COVID-19 DISINFECTION AND DECONTAMINATION SERVICES AGREEMENT

[to be completed at time of contract award]

THIS AGREEMENT FOR COVID-19 DISINFECTION AND DECONTAMINATION SERVICES (“Agreement”) is made as of the last date written below (the “Effective Date”) between the **OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION**, located at 682 Prospect Street, Berea, Ohio 44017 (hereinafter referred to as the “Commission”) and [**CONTRACTOR**] with its office located at [*INSERT*] (hereinafter referred to as “Contractor”) (the “Commission” and “Contractor” each may be referred to as a “Party” or collectively as the “Parties”).

RECITALS

WHEREAS, the Commission issued Request for Proposal No. [*insert*]-2020 on [*date*], 2020 for COVID-19 Disinfection and Decontamination Services (the “RFP”) and Contractor timely submitted a proposal in response to the RFP; and

WHEREAS, Commission staff determined that Contractor’s proposal was the best proposal of those submitted and recommended to the Executive Director that Contractor be awarded the contract for the required services; and

WHEREAS, the Executive Director approved the recommendation to award the contract to Contractor for the required services and the Commission authorized this contract under Resolution No. [*insert*], adopted [*insert date*]; and

WHEREAS, Contractor is a [*corporation/limited liability company*] engaged in the business of providing COVID-19 disinfection and decontamination services registered with the State of Ohio;

WHEREAS, the Commission desires to contract with Contractor to designate it as the primary, but not exclusive, provider of COVID-19 disinfection and decontamination services for the area between [*TBD*] the “Service Area”); and

WHEREAS, Contractor wishes to provide COVID-19 disinfection and decontamination services to the Commission within the Service Area.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

In consideration of these facts and the mutual covenants of the parties under this Agreement, the Parties agree as follows:

1. **RECITALS**. The Recitals hereto are incorporated herein by reference to the same extent

and with the same force and effect as if fully set forth herein.

2. **TERM.** The initial term of this Agreement (the “Initial Term”) shall be for a period of one year, commencing on the Effective Date. Following the Initial Term, this Agreement may be renewed for up to two (2) one-year renewal terms at the discretion of the Commission (“Renewal Terms”) (collectively, the Initial Term and any Renewal Terms shall be referred to as the “Term”). Either Party may terminate this Agreement during the Term consistent with the terms of Section 15 of this Agreement.
3. **SERVICES AND RESPONSIBILITIES.** Contractor shall be a designated provider of COVID-19 Disinfection and Decontamination services (the “Services”) within the Service Area. For the purposes of this Agreement, the Services in the Service Area shall be in compliance with the Scope of Services, attached hereto as Exhibit A, and shall include such other services as may be required by the Commission, Commission employees, or Commission-designated representatives, including, but not limited to:

The Commission reserves the right to contract with additional COVID-19 Disinfection and Decontamination service providers and/or back-up providers for the Service Area. Contractor shall be the primary provider and additional or back-up providers shall be used at the discretion of the Commission. This Agreement shall not restrict the right of Contractor to enter into COVID-19 Disinfection and Decontamination service agreements with other entities.

4. **REPORTING REQUIREMENTS.** The Contractor shall maintain a daily activity log and provide a weekly activity report to the Director of Administration as provided below:
 - A. Provide an adequately detailed log of all activities and communications. This shall be an activity log maintained by the Contractor for each day of service. This log shall include:
 1. Shift starting and stopping times
 2. Service starting and stopping times
 3. Description of the service
 4. Location of the service
 5. Any additional information deemed to be necessary
 - B. Provide a weekly activity report. This report shall be delivered electronically to the Director of Administration no later than five (5) business days following the end of each calendar week.

The Contractor shall keep accurate and complete financial accounts, records and documentation pertaining to the Services provided to the Commission. The Contractor shall make said accounts, records, and documentation available to the Commission for review upon the Commission’s written request.

The reporting requirements may change from time to time as requested by the Commission.

5. **MATERIAL, EQUIPMENT AND PERFORMANCE WARRANTY**: The Contractor shall provide the materials and/or equipment and the rendition of the Services contemplated under this Agreement in a manner consistent with the standards of competent practice for that industry and/or profession. All materials and/or equipment provided shall meet the specifications of the Commission, shall be free from any defects in material and workmanship, and shall be fit for the purpose of their intended use.
6. **COMPENSATION, FEES AND INVOICES**. The rate of compensation to be paid to Contractor by the Commission during the Term of this Agreement shall be as provided in Contractor's Fee Proposal attached hereto as Exhibit B and incorporated herein by reference.

The Contractor shall submit verified invoices to the Commission once per month. Invoices can be submitted to the Commission's Accounts Payable, 682 Prospect Street, Berea, Ohio 44017 or electronically to the following e-mail address: apinvoiceing@ohioturnpike.org. Invoices received from the Contractor shall be verified for accuracy and invoices not in dispute (or any portion of a disputed invoice that is not in dispute) shall be paid by the Commission within thirty (30) days of their receipt. Invoices must set forth the exact nature of the goods and/or services provided, the date(s) of providing such goods and/or services and the individual(s) providing such goods and/or services.

If the invoice or any portion is not acceptable, the Commission shall inform the Contractor of the reasons and the actions necessary, if any, to qualify the invoice for approval.

7. **MEETINGS**. The Parties shall maintain ongoing communications and meetings as mutually agreed upon to ensure the Commission is informed on Contractor's performance as it relates to this Agreement. The information shall include, but not be limited to, the services being provided, provisions to improve the services, as well as a review of the hours worked and Contractor's personnel performing the Services. Contractor and the Commission shall have the right to mutually agree from time to time to either increase or decrease the amount and content of information to be reviewed at meetings.
8. **ACCESS TO THE TURNPIKE AND RESTRICTIONS**. The Contractor will be provided access and use of Turnpike roadways during the progress of the Work under this Agreement as follows:
 - A. Toll-free access for the Contractor's equipment and vehicles may be granted. A limited number of transponders (one (1) per vehicle provided for service) will be issued for the Contractor's motor vehicles. A detailed request outlining the quantity and need for toll-free transponders must be submitted to and approved by the Director of Administration.
 - B. It shall be the Contractor's responsibility to manage the issuance and use of all non-revenue transponders for performing the Work under the Agreement. The Contractor shall be liable for any misuse of said transponders whether it is by the Contractor's forces or those of a subcontractor. Use of these transponders for personal travel or other travel not associated with this Agreement is strictly forbidden. The Contractor shall be advised that any

personal or company transponders issued for use other than on this Agreement, must be removed from service vehicles or properly stored in protective mylar bags provided. It is the responsibility of the Contractor to advise all subcontractors of the same requirements. The Commission will not be responsible for providing credit to accounts that are billed due to improper storage of personal or company transponders. Upon the completion of the Agreement, ALL transponders shall be returned to the Commission. Should the Contractor return less than the number issued to them, the Commission shall withhold the sum of one hundred (\$100.00) dollars per transponder not returned from any monies due the Contractor.

- C. The toll-free access will be limited to within up to two (2) Interchanges beyond the Contractor's service area limits. The Contractor will be charged a toll for all Turnpike travel outside the limits authorized by the toll-free access. Any method of operation involving such travel will be subject to such requirements and restrictions as the Commission may impose to facilitate proper collection of tolls and avoid undue inconvenience or hazard to the traveling public.

9. COMPLIANCE WITH LAWS, RULES, REGULATIONS, LICENSING AND CERTIFICATION REQUIREMENTS.

Contractor shall render the Services in material compliance with all applicable federal, state (including those set forth in Chapter 4765.01, et. Seq. of the Ohio Revised Code) and local laws, ordinances, codes, rules and regulations, including without limitation, the laws relating to the payment of wages, equal employment opportunity, campaign contributions, drug-free workplace, nondiscrimination in employment, unemployment compensation, insurance premiums, workers' compensation premiums, income tax deductions, social security deductions, and any and all tax and payroll deductions required for its employees and it, its employees, and its subcontractors shall meet all federal, state and local license, certification and authorization requirements for the Services. Failure by Contractor to obtain and/or maintain any required license and authorization shall result in the immediate and automatic termination of this Agreement. The failure of any of Contractor personnel to obtain and/or maintain any required license and authorization for the Services which they are responsible for providing shall bar such person from providing the Services under this Agreement until the license or authorization has been obtained. In the event that any provision of this Agreement is in conflict with any law or regulation, then such law or regulation shall prevail.

- 10. TAX EXEMPT STATUS:** The State of Ohio and the Commission are exempt from federal excise taxes and all state and local taxes, unless otherwise provided. The Commission does not agree to pay any taxes on commodities, goods, or services acquired from, or by, the Contractor. The Contractor must, however, comply with all statutes, rules and regulations governing federal, state, and local income, sales, and excise taxes. The Commission will provide the Contractor with certificates of exemption for federal excise taxes and state sales and use tax.

- 11. INDEMNIFICATION:** The Contractor shall, at its own expense, protect, defend, indemnify and hold harmless the Commission and its members, officers, agents and employees from all claims, damages, costs, lawsuits and expenses, including, but not limited to, all costs from

administrative proceedings, court costs and attorneys' fees that they may incur as a result of (A) any criminal acts, intentional torts, acts or omissions which by statute create strict liability, (B) negligent acts or omissions of the Contractor or any of its officers, employees or agents which may arise out of this Agreement and in connection with the Services; and (C) of injury to the person or property of any persons whomsoever resulting from the Contractor's performance of this Agreement and the Services. In the event that Contractor's insurance coverages fail to completely fulfill Contractor's indemnification responsibilities under this Agreement, the Contractor shall remain responsible for the sum of damages, costs and expenses which are in excess of the sum paid out by such insurance coverages on behalf of or reimbursed to the Commission, its officers, employees, and agents. Said duty to indemnify and/or save harmless is subject to applicable statutory immunity. Nothing herein contained shall require the Contractor to reimburse the Commission for acts or omissions caused by the sole negligence or intentional acts of the Commission.

12. INSURANCE. Contractor shall purchase and maintain insurance not less than the limits set forth below. All coverages shall be with insurance companies licensed and admitted to do business in the State of Ohio who are acceptable to the Commission and have a minimum A.M. Best Company's Insurance Reports rating of A or A- (Excellent).

- A. Ohio Worker's Compensation Insurance covering all employees who engage in any work in connection with the performance of the Agreement except employees hired in a state other than Ohio who will not engage in any work in the State of Ohio.
- B. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following: 1. Contractual Liability; 2. Products and Completed Operations; 3. Independent Contractors Coverage; 4. Broad Form General Liability Endorsement or Equivalent.
- C. Motor Vehicle Liability Insurance, including Ohio No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Excess Umbrella Liability Coverage covering all of the above stated insurance coverages with a limit of no less than \$5,000,000 per occurrence and aggregate. The insurance requirements set forth in B, C and D above can be met by combining the coverage afforded in policies providing the required coverage with the excess umbrella liability coverage required herein.
- E. Additional Insured - Commercial General Liability Insurance, Motor Vehicle Liability Insurance and Medical Professional Liability Insurance, as described above, shall include an endorsement stating the following shall be Additional Insureds: "the Commission and its elected and appointed officials, employees and agents. It is understood and agreed by naming the Commission as additional insured, coverage afforded is considered to be non-contributory and primary and any other insurance the Commission may have in effect shall be considered secondary and/or

excess.”

- F. Cancellation Notice - All insurance described above shall include an endorsement stating the following: “It is understood and agreed that thirty (30) days advanced written notice of cancellation, non-renewal, reduction and/or material change shall be sent to the Commission.”
- G. Proof of Insurance - Contractor shall provide the Commission at the time this Agreement is returned by it for execution, the certificates of insurance and endorsements (endorsements to be provided within 90 days of date of this Agreement) showing possession of the policies required above. If so requested, certified copies of all policies will be furnished. The above- described certificates of insurance shall be delivered to and remain in the custody of the Commission and each shall be in form and words satisfactory to the Commission’s General Counsel.
- H. If any of the above coverages expire during the term of the Agreement, Contractor shall deliver renewal certificates and/or policies to the Commission prior to the expiration date.
- I. The Commission may, at any time, require Contractor to obtain any additional or other insurance. In each such case, the Commission shall reimburse Contractor for the net premium cost thereof which reimbursement shall be made at the time of final payment.

13. PERFORMANCE BOND: The Contractor shall submit a performance bond in a form satisfactory to the Commission at the time of Agreement execution. Said bond shall provide for payment to the Commission in the event said Contractor fails to perform any of the terms and conditions of the Agreement, at any time during the term thereof in an amount equal to \$500,000.00 annually. The bond shall be furnished by a surety authorized to do business in the State Ohio and shall remain in effect throughout the term of the Agreement.

14. WAIVERS. No failure or delay on the part of either of the Parties to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege. In no event shall the making by the Commission of any payment due to Contractor constitute or be construed as a waiver by the Commission of any breach of a provision of this Agreement, or any default which may then exist, on the part of Contractor, and the making of any such payment by the Commission while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Commission in respect to such breach or default.

15. TERMINATION. Notwithstanding any other provision in this Agreement to the contrary, this Agreement and the Services may be terminated prior to the end of the Term by any of the following means:

- a. By mutual consent of the Parties through an amendment to this Agreement signed by the authorized representatives of both the Commission and the Contractor.

- b. By either Party on thirty (30) days' prior written notice to the other Party.
- c. By either Party in the event of a default, as defined in Section 16 and elsewhere in this Agreement if the defaulting Party fails to cure the default within fifteen (15) days after receiving notice of default from the other Party. In the event the Commission determines that the Contractor's breach of this Agreement endangers public health and safety, the Commission may, in its discretion, decide not to allow the Contractor to have a cure period and may immediately terminate this Agreement.

16. DEFAULT. In addition to other grounds for breach or default explicitly referenced elsewhere in this Agreement, default can also occur as a result of the following:

- a. Material failure to comply with any provision of this Agreement, including, but not limited to, the Service and Responsibilities set forth in Section 3 or the Reporting Requirements set forth in Section 4.
- b. Failure to obtain and or maintain insurance of the types and amounts as required in this Agreement.

17. INDEPENDENT CONTRACTOR STATUS. Nothing in this Agreement shall constitute, be construed to be, or create a partnership, joint venture, or lease between Contractor and the Commission. Contractor and the Commission are independent contractors under this Agreement. The Commission agrees that Contractor has the discretion to define the manner in which it performs the Services, including without limitation, each of the following: (A) determining the identity of its personnel who will perform the Services. In particular, the Commission recognizes that Contractor is under no obligation of any kind to interview or employ any Commission personnel to become Contractor employees; (B) setting the terms and conditions of employment for all Contractor personnel who perform the Services; (C) applying Contractor service policies or procedures with respect to the manner in which Contractor will provide the Services; and (D) exercising discretion with respect to the manner in which Contractor conducts its business operations in the Service Area. It is understood that neither Contractor nor its employees are construed as employees of the Commission for the purpose of the Public Employees Retirement System ("PERS"), Workers' Compensation, or for any other purpose.

18. 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.

19. AMENDMENT OR MODIFICATION. All modifications, amendments, or waivers of any provisions of this Agreement or the Services, shall be made only by the written mutual consent of the Parties.

20. **ASSIGNMENT OR SUBCONTRACTING.** The Contractor shall not assign, subcontract, or otherwise transfer its duties and/or obligations under this Agreement, without the prior written consent of the Commission.
21. **APPLICABLE LAW AND VENUE.** The Agreement shall be construed under and governed by the laws of the State of Ohio, without regard to conflicts of law principles. Any litigation arising out of or relating in any way to the Agreement or performance thereunder shall be litigated in its entirety only in state courts in Cuyahoga County, Ohio, and Contractor hereby irrevocably consents to such jurisdiction.
22. **DISREGARDING TITLES.** The titles of the Sections set forth in this Agreement are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Agreement.
23. **COMPLETE AGREEMENT.** This Agreement and the attached Addendums to which it refers contain all the terms and conditions agreed upon by the Parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the Parties.
24. **SEVERABILITY.** If any clause or provision of this Agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that clause or provision shall be null and void, and any such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement. Where the deletion of the invalid or unenforceable provision would result in the illegality and/or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the provision was rendered invalid or unenforceable.
25. **NOTICE.** All notices and other communications provided for in this Agreement shall be in writing and shall be deemed to have been given (A) when delivered in person to the recipient, (B) 48 hours after deposit in the United States Mail, by certified mail, postage prepaid, addressed to the party at its address set forth above or at another address as the party shall designate by providing notice under this Section; (C) when Federal Express or comparable express delivery services delivers the notice to the recipient; (D) when the recipient receives the notice by electronic mail to the correct electronic mail address of the recipient, as confirmed in electronic notice to the sender. Notices will be directed to the Executive Director of the Commission and the President of the Contractor. Each Party shall inform the other of who the person(s) is as designated from time to time.
26. **THIRD PARTIES.** This Agreement is for the benefit of the parties, their successors, and assigns, and is not for the benefit of any third party.
27. **AMBIGUITIES.** Any term of this Agreement which is found to be ambiguous shall not be construed against either party on the basis of authorship or otherwise.
28. **CERTIFICATION OF AUTHORITY TO SIGN AGREEMENT.** The persons signing on behalf of the Parties to this Agreement certify by their signatures that they are duly

authorized to sign this Agreement on behalf of said Parties and that this Agreement has been authorized by said Parties.

- 29. COUNTERPART EXECUTIONS; FACSIMILES AND ELECTRONIC MAIL.** The parties may execute this Agreement in any number of counterparts with the same effect as if each party had signed the same physical document. Each party may transmit the executed copies in an imaged format to the other party by facsimile or electronic mail, and the imaged copies shall have the same effect as if each party had signed the same physical document. All executed counterparts, whether originals or copies sent by facsimile, electronic mail, or a combination, shall be construed together, and shall constitute one and the same Agreement.
- 30. ELECTRONIC SIGNATURES.** The parties agree that for purposes of facilitating the signing of this Agreement, an electronic signature or an electronic or facsimile transmission of a signature shall be an original signature for all purposes.

[Signatures are located on the following page.]

IN WITNESS WHEREOF, the authorized representatives of the Parties have fully signed and entered into this Agreement on the day and year last written below.

OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

Ferzan M. Ahmed, P.E., Executive Director

Date: _____

APPROVED:

Jennifer Stueber, Esq., General Counsel

CONTRACTOR

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A – SCOPE OF SERVICES

EXHIBIT B- CONTRACTOR’S FEE PROPOSAL