



REQUEST FOR PROPOSAL

2023 SOUTH CAMPUS BIKE PATH

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ADVERTISEMENT FOR BIDS

HEATH-NEWARK-LICKING COUNTY PORT AUTHORITY 851 IRVING-WICK DRIVE WEST HEATH, OHIO 43056

Sealed proposals shall be received by the Heath-Newark-Licking County Port Authority at its offices located at 851 Irving-Wick Drive West, Heath, Ohio 43056-6114, until Thursday, May 25, 2023, at 2:00 P.M. at which time and place all proposals shall be publicly opened at 2:00 P.M. and read aloud for the following: **“2023 SOUTH CAMPUS BIKE PATH”**. Any bid received after the designated time shall be returned unopened.

A mandatory pre-bid meeting will occur on Friday, May 12, 2023, at 10:00 A.M. Failure to attend this meeting will result in your bid being rejected.

The Request for Proposal, including specifications and related information, are on file with the Heath-Newark-Licking County Port Authority (hereinafter "Authority"). Copies may be obtained from the President and CEO's office and are available online under the project name at www.hnlcpa.com/bids. The Authority shall not be responsible for full or partial sets of documents obtained from any other source. Proposals must be submitted in sealed envelopes marked **“2023 SOUTH CAMPUS BIKE PATH”**.

Award of the contract shall be to the lowest responsive and responsible bidder. An award shall be evidenced only by a fully executed contract, signed by the Authority and the successful bidder. Alternatives or exceptions to specifications shall be considered in the sole discretion of the Authority if they are equal or substantially equivalent to that specified, but any irregularities or deviations which do not respond to bid specifications in all material respects or which affect the amount of the bid or give the bidder a competitive advantage shall be grounds for rejection of the bid. At any time prior to the full execution of the contract by the Authority and the successful bidder the Authority reserves the right to reject any and all bids and to waive any informalities, irregularities and technical defects, which it determines are of a minor nature and do not result in a competitive advantage.

A certified check drawn on a solvent bank authorized to do business in the State of Ohio, payable to the Heath-Newark-Licking County Port Authority, in an amount equal to ten percent (10%) of the bid price, or a bid and contract bond executed by the bidder and a surety company authorized to do business in the State of Ohio and satisfactory to the Authority, in an amount equal to one hundred percent (100%) of the bid price shall be submitted with each bid. Any deviation from the requirement for bid security that does not affect the amount of the bid may, in the sole discretion of the Authority, be waived. The amount of such bond or check of the bidder to whom the award is made shall be forfeited and paid to the Authority as liquidated damages if the bidder fails to enter into a contract with the Authority or to furnish the required contract bond within ten (10) days after notice of the acceptance of its proposal. The bonds of unsuccessful bidders, or the amount of the checks thereof, shall be returned after a contract is executed with the successful bidder.

A contract and payment bond in the amount of one hundred percent (100%) of the amount of the contract, with a good and sufficient surety rated A- or better by A.M. Best Company, authorized to do business in the State of Ohio and approved by the Authority, shall be required for faithful performance of the contract.

The Authority hereby notifies all bidders that it shall affirmatively assure that minority business enterprises shall be afforded full opportunity to submit bids in response to this invitation and shall not be discriminated against on the grounds of race, color, religion, sex, age, handicap, ancestry or national origin in the consideration for an award.

Dated at the Heath-Newark-Licking County Port Authority, 851 Irving-Wick Drive West Heath, Ohio; 43056-6114 on May 2, 2023.

By: Richard J. Platt, President and CEO, Heath-Newark-Licking County Port Authority

NOTICE TO BIDDERS

SEALED BIDS will be received in the Offices of the Heath-Newark-Licking County Port Authority until 2:00 P.M., Thursday, May 25, 2023, for “2023 SOUTH CAMPUS BIKE PATH”.

Sealed bids may be mailed to:

Bid: “2023 SOUTH CAMPUS BIKE PATH”
Heath-Newark-Licking County Port Authority
851 Irving Wick Drive, West
Heath, OH 43056-6114

Specification packets may be obtained at the above address in an electronic format at no charge and are available at: <http://hnlcpa.com/bids>. Printed copies must be requested at least two days in advance for a non-refundable charge of \$45. A bid bond for 100% of the bid amount or a certified check on a solvent bank for 10% of the bid amount must accompany bid. If bid is accepted, a contract will be entered into with a required performance bond in the amount of no less than 100% of the contract price. Bond returns conditional upon the faithful performance of the contract.

A **mandatory pre bid meeting** will be held on Friday, May 12, 2023, at 10:00 A.M. Failure to attend this meeting will result in your bid being rejected.

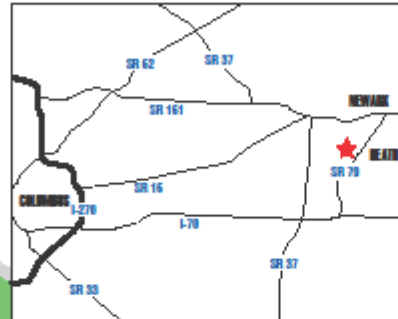
All bids will be opened Thursday, May 25, 2023, at 2:00 P.M.

All bids must be in sealed envelopes with the above address on the outside of the envelope.



BASE

**CENTRAL OHIO
AEROSPACE &
TECHNOLOGY CENTER**



Directions

Port Authority Offices

From I-70 and points east, west, and south:
Use exit no. 129 off of I-70, follow SR 79 North to Heath. Turn left at the light to Irving-Wick Drive. Go about one mile. Turn left and follow James Parkway for the East Entry to COATC.

From SR 16 and points north, west and east:
Exit SR 16 to SR 79 South through Heath. After you pass the Indian Mound Mall area, turn right onto Irving-Wick Drive West. Go about one mile. Turn left and follow James Parkway for the East Entry to COATC.

On Campus Directions

Using the James Parkway East Entry:
Follow the entryway to the stop sign. Turn right and follow the loop road to the north and west.

Using the Irving-Wick Drive North Entry:
Follow the loop road around the south of the large building, turn left at the eastern side of the building, and follow the drive into the parking lot of the Port Authority offices.



INFORMATION FOR BIDDERS

1. **Submission of Proposals.**

Proposals must be submitted in sealed envelopes, plainly marked as stated herein before in the "Advertisement." Proposals must be received at the offices of the Heath-Newark-Licking County Port Authority (hereinafter "Authority") by the specified time and date at which time and place the proposals shall be opened publicly and read aloud. Award of the contract shall be to the lowest responsive and responsible bidder. Alternatives or exceptions to specifications shall be considered in the sole discretion of the Authority if they are equal or substantially equivalent to that specified, but irregularities or deviations which do not respond to bid specifications in all material respects or which affect the amount of the bid or give the bidder a competitive advantage shall be grounds for rejection of the bid. At any time prior to the full execution of the contract by the Authority and the successful bidder the Authority reserves the right to reject any and all bids and to waive informalities, irregularities, and technical defects which it determines are of a minor nature. No rights shall vest in the bidder until the contract is fully executed by the Authority and sufficient funds have been certified for payment.

Proposals may be withdrawn at any time before the scheduled closing time for receipt of bids, but may not be modified and resubmitted. No proposal or bid security may be withdrawn or modified after the scheduled closing time for submission of proposals for at least sixty (60) days, except as provided in Section 9.31 of the Ohio Revised Code.

If an item in the proposal contains a choice to be designated by the bidder, the bidder shall indicate his choice in accordance with the specifications for that particular item, and thereafter no other choice shall be permitted.

The proposal must be signed in ink by the individual proprietor, by a member of the partnership, by a member or officer of each firm representing a joint venture, by an officer of a corporation, or by an agent of the contractor legally qualified and acceptable to the Authority. If the proposal is made by an individual, his name and business address must be shown; if as a joint venture, the name and business address of each firm represented by the joint venture must be shown; if by a corporation, the name of the state under the laws of which the corporation is chartered and the name of the corporation and the business address of its corporate officials must be shown; if as a partnership, the name and business address of a general partner must be shown; or if by any other business entity the Authority shall require the names and addresses of the responsible persons for such entities. Anyone signing a proposal as agent must file with the proposal legal evidence of his authority to do so.

Before a contract will be awarded to a foreign corporation or a person or partnership that is not a resident of the State of Ohio, such foreign corporation or a non-resident person or partnership shall file with the Secretary of State a power of attorney designating an agent for the purpose of accepting service of process in any action in law or equity brought in the State of Ohio.

The successful bidder, if any, will be required to submit a Federal Form W-9.

2. Bonds and Guarantees

- (a.) Bid Guaranty: Bidder shall furnish a Bid Guaranty, as prescribed in Sections 153.54, 153.57, and 153.571 of the Ohio Revised Code, in the form of either:

- (1) a bond for the full amount of the bid in the form of the Bid Guaranty and Contract Bond included in the Contract Documents; or
- (2) a certified check payable to the order of the "Heath-Newark-Licking County Port Authority" in an amount equal to 10% of the bid.

NOTE: AIA Bid Bond forms are not acceptable.

Any deviation from the requirement for bid security that does not affect the amount of the bid, may, in the sole discretion of the Authority, be waived. In case several bid prices are submitted, the amount of the surety bond or certified check shall be based on the greatest total that can be derived by combining the various bid prices. The amount of the surety bond or certified check of the successful bidder shall be paid to the Authority as liquidated damages if the successful bidder fails to enter into a contract with the Authority and furnish the required contract bond within ten (10) days after receiving notice of the acceptance of its proposal.

- (b.) Contract Bond: The successful Bidder, who, as a Bid Guaranty, submits a certified check in an amount equal to 10% of the bid (including all alternates), shall furnish a Contract Bond using the Contract Bond form included in the Contract Documents in an amount equal to 100% of the Contract Sum.

NOTE: AIA Bond forms are not acceptable.

- (c.) Bonds must be issued by a good and sufficient surety company ("Surety") rated "A-" or better by A.M. Best Company, authorized by the Ohio Department of Insurance to transact business in the State of Ohio, approved by the Authority, with proof of authority of the officer or agent signing the surety bond and a recent financial statement of the Surety.
- (g.) The name, address, and telephone and fax numbers of the Surety and the Surety's Agent should be typed or printed on each bond.

BID GUARANTY AND CONTRACT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned ("Contractor") _____ as principal and _____ as surety are hereby held and firmly bound unto the Heath-Newark-Licking County Port Authority, as obligee in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on _____, 2023, to undertake the project known as _____. The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive Alternates made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of _____ Dollars (\$_____). (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including add Alternates. Alternatively, if the blank is filled in the amount stated must not be less than the full amount of the bid including add Alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this _____ day of _____, 2023.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above named principal has submitted a bid for work on the Project.

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not-to-exceed ten percent (10%) of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the bid of the principal and the principal within ten (10) days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein.

Now also, if the said principal shall well and faithfully do and perform the things agreed by said principal to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; and surety shall indemnify the obligee against all damage suffered by failure of the principal to perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material therefore and to pay all lawful claims of subcontractors, materialmen, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract and surety further agrees and assents that this undertaking is for the benefit of any subcontractor, materialman, or laborer having a just claim, as well as for the obligee; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

Signed and sealed this _____ day of _____, 2023.

PRINCIPAL	Printed name & Title
By: _____	_____
_____	_____

SURETY	Printed Name & Title
By: _____	_____
_____	_____
Address _____	Phone Number _____
_____	Fax Number _____

SURETY'S AGENT	Printed Name & Title
By: _____	_____
_____	_____
Address _____	Phone Number _____
_____	Fax Number _____

NOTE: The Contract Bond form that follows is to be used ONLY by a bidder that is awarded a contract and submits a form of bid guaranty other than the combined Bid Guaranty and Contract Bond with its bid. If a bidder submits a combined Bid Guaranty and Contract Bond, then the bid guaranty becomes the contract bond when the contract is awarded.

AIA Bid Bond or Payment and Performance Bond forms are not acceptable for this Project.

CONTRACT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned ("Contractor"), as principal, and _____,
as surety, are hereby held and firmly bound unto the Heath-Newark-Licking County Port Authority ("Owner") as obligee, in the penal sum of _____ Dollars (\$_____), for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas, the above-named principal did on the __ day of _____, 2023, enter into a contract with the Owner for _____ related to _____ ("Project"), which said contract is made a part of this bond the same as though set forth herein:

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

The said surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

Signed and sealed this _____ day of _____, 2023.

PRINCIPAL

By: _____

Printed Name & Title

SURETY

By: _____

Printed Name & Title

Surety's Address

Surety's Telephone Number

Surety's Fax Number

SURETY'S AGENT

By: _____

Printed Name & Title

Surety's Agent's Address

Surety's Agent's Telephone Number

Surety's Agent's Fax Number

3. **Award of Contract.** After the proposals are publicly opened and read aloud, they shall be compared. The Authority reserves the right to reject any and all proposals and to waive informalities, irregularities and defects, which it determines are of a minor nature and do not result in a competitive advantage.

The contract shall be awarded to the lowest responsive and responsible bidder as soon as reasonably possible after the opening of the proposals, but not later than sixty (60) days after the opening of the proposals, unless an extension is mutually agreed upon in writing by the Authority and the then apparent low bidder. In no case shall an award be made until all necessary investigations are made as to the responsibility of the bidder to whom it is proposed to award the contract.

An award shall be evidenced only by a fully executed contract, signed by the Authority and the successful bidder. The Authority reserves the right to rescind any notice of intent to award the contract at any time before the execution of the contract by all parties without incurring any liability. The successful bidder assumes all risk for any action taken prior to full execution of the contract by both parties.

The successful bidder shall be required to execute the contract and to furnish the required contract and payment bond and comply with all other requirements set forth in the Notice of Intent to Award within ten (10) calendar days from the date when Notice of Intent to Award Contract is communicated in writing to the successful bidder, unless an extension is mutually agreed to in writing by the Authority and the successful bidder. If the successful bidder fails to execute the contract within such ten (10) day period, the successful bidder shall be liable for the amount of its certified check or surety bond as provided by law with its proposal, and the Authority may, at its option, rescind its Notice of Intent to Award Contract and award the contract to the next lowest responsive and responsible bidder or reject all bids and readvertise the work.

4. **License.** Bidders must comply with the statutory requirements for doing business in Ohio, including the requirements relating to the licensing of foreign corporations. Before a contract will be awarded to a foreign corporation or a person or partnership that is not a resident of the State of Ohio, such foreign corporation or non-resident person or partnership shall file with the Secretary of State a power of attorney designating an agent for the purpose of accepting service of process in any action in law or equity brought in the State of Ohio.

5. **Bidder Responsibility.**

(a) Each bidder shall submit in writing with its proposal a detailed written statement to show to the reasonable satisfaction of the Authority that it is a responsible contractor, including information to show that it has sufficient plant, equipment, experience, ability, and resources to satisfactorily fulfill the contract in accordance with its terms, conditions and specifications. The Authority may make such investigations as it deems necessary to determine the ability of the bidder to perform the contract, and the bidder shall furnish to the Authority all such information and data for this purpose as the Authority may request. In determining bidder responsibility, consideration shall be given to (a) the experience of the bidder; (b) the financial condition of the bidder; (c) the bidder's conduct and performance on previous contracts; (d) the bidder's facilities; (e) the bidder's management skills; (f) the bidder's ability to execute the contract properly; (g) the bidder's method of approach; (h) the bidder's demonstrated understanding of the task; (i) the bidder's ability to meet the timeline; (j) the cost effectiveness of the bidder's proposal; (k) whether the bidder met the bond requirements; and (l) the bidder's business and credit references.

(b) Each bidder shall also provide the following documentation with its bid.

1. Identify the superintendent, foremen and all other supervisory staff, which the Bidder proposes to employ on the project. Show any training from manufacturers along with the dates training was received, their experience in the industry, their trade or craft and the length of their employment with Bidder.
2. Identify all projects in the past 5 years in which the Bidder has experienced cost overruns or project delays. For each project, identify and supply contact information for the owner. Describe the nature, extent, and reason for each cost overrun or delay.

3. Identify all projects in the past 5 years in which the Bidder has been assessed a penalty or liquidated damages. For each project identify and supply contact information for the owner. Describe the nature, extent, and reason for each such failure to meet a project deadline.
 4. Identify all claims or lawsuits that have been brought against your company or any related entities in the last five years. For each such claim identify the entity asserting the claim, the date the claim was filed and resolution of the claim.
 5. Identify all projects in the past three years where Bidder's bonding authority has been notified of non-satisfactory completion of your contract for any reason. Indicate who the bonding company was and provide details of the resolution.
 6. Provide references for three public projects performed within the past year and at least three projects, public or private with a value equal to or slightly greater than the value of this project.
 7. A list of all open projects including those in contract but not currently begun.
- (c) By submitting a bid, each Bidder agrees to each of the following conditions. Failure to meet any of the enumerated conditions shall be grounds to reject a bid.
1. If there are at least three (3) bidders, the Low Bidder whose bid is more than twenty percent (20%) below the next lowest bidder shall list two (2) projects that are each within seventy-five percent (75%) of the bid project estimate for similar projects and that were successfully completed by the bidder not more than five (5) years ago. (Successful being defined to include being on time and in accordance with the bid.)
 2. Bidder certifies that Bidder has not been penalized or debarred from public contracts for falsified certified payroll records or any other violation of the Fair Labor Standards Act in the last five (5) years.
 3. Bidder certifies that Bidder has not been debarred from public contracts.
 4. Bidder certifies that Bidder maintains a substance abuse policy that its personnel are subject to on this project. Bidder will provide this policy or evidence thereof upon request.
 5. Bidder certifies that any of Bidder's construction or contractor's licenses have not been revoked in any state.
 6. Bidder certifies that Bidder has provided a complete listing of all final judgments against it that have not been satisfied at the time of award. Bidder acknowledges that the Heath-Newark-Licking County Port Authority reserves the right to reject any bid submitted by a Bidder who has sufficient judgments against it so as to render said Bidder's ability to successfully complete the project in doubt.
 7. Bidder certifies that Bidder has complied with unemployment and workers' compensation laws for at least the nine months preceding the date of bid submittal.
 8. Bidder certifies that Bidder has implemented an OSHA compliant Safety Program and will provide evidence of such upon request.
- (d) In addition, the Authority reserves the right to disqualify or refuse to consider a proposal if it is deficient for any of the following reasons:
1. The Bidder submits more than one proposal for the same goods or services under the same or different names;

2. There is evidence of collusion among Bidders;
3. The Bid contains prices which are unbalanced;
4. The Bidder lacks competency and/or has inadequate machinery, plant or other equipment;
5. The Bidder has uncompleted contracts, whether or not with the Authority, which in the judgment of the Authority, might hinder or prevent the prompt completion of the contract if awarded;
6. The Bidder has failed to adequately perform or has breached previous contracts, whether or not such performance or breach was waived by the Authority at a prior time; and
7. Any other reasonable factor.

Before any contract is awarded, the Bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any or all materials to be used in the performance of the contract together with samples. Samples submitted may be subjected to the tests provided for in these specifications to determine their quality and fitness for the contract.

6. **Claims.** All claims, counterclaims, disputes and other matters between the Authority, its agents and employees, and the successful bidder arising out of or relating to this agreement or its breach shall be decided in a court of competent jurisdiction within the County of Licking, State of Ohio, which shall be the exclusive venue and jurisdiction for such matters. Should the bidder bring an action against the Authority arising out of or related to its bid and the bidder does not prevail in the action, the bidder shall reimburse the Authority for all of its attorneys' fees and consultant's fees, and all expenses related to defense of the action, including any pre-suit legal expense related to the dispute.
 7. **Addenda.** If any person contemplating submitting a proposal for the proposed project is in doubt as to the true meaning of any part of the Request for Proposal, they may submit to the Authority a written request for an interpretation thereof. The person submitting the request shall be responsible for its prompt delivery. Any interpretation of the contract documents shall be made only by addendum duly issued. A copy of such addendum shall be faxed, mailed, e-mailed or delivered to each person registering at the mandatory pre-bid meeting, will be made available online and shall become part of the Request for Proposal. The time for opening the proposals shall be extended for one week if, within seventy-two hours before the date set for the opening of proposals, the Authority mails or otherwise furnishes to prospective bidders a modification of its Request for Proposal (addendum). The Authority shall not be responsible for any other explanation or interpretation of the Request for Proposal. The Authority's office hours are Monday through Friday 7:30 A.M. to 4:30 P.M.
- The addendum process shall also be used for unspecified product substitutions. Prospective bidders shall submit written requests at least one week before the proposal closing date. Requests received after this time shall not be considered.
8. **Non-Collusion Affidavit.** Each bidder is required to execute and submit with its proposal a Non-Collusion Affidavit in the form provided with this Request for Proposal.
 9. **Combination or Conditional Proposals.** The Authority reserves the right to make awards on combination proposals or separate proposals to the best advantage of the Authority. No combination proposals, other than those specifically prescribed in the Request for Proposal, shall be considered.
 10. **Delinquent Personal Property Tax.** All bidders are charged with notice of Section 5719.042 of the Ohio Revised Code. All bidders agree to submit to the Authority, prior to the time the contract is executed, the affidavit required by such section if they are the successful bidder. Such affidavit shall be incorporated into and become a part of the contract, and no payment shall be made with respect to the contract unless such affidavit has been so executed and submitted.

11. **Equal Opportunity.** Minority business enterprises shall be afforded full opportunity to submit proposals, and bidders shall not be discriminated against on the grounds of race, color, religion, sex, age, handicap, ancestry, or national origin in the consideration for an award.
12. **Prevailing Wage.** This project does not fall under prevailing wage.
13. **Pre-Bid Conference**
- (a) A **mandatory pre-bid meeting** will be held at the Port Authority offices on Thursday, May 12, 2023, at 10:00 A.M. Contact the owner's representative, John Vermaaten, Director, Facilities & Operations at 740-788-5500 ext. 222 if there are any questions. Failure to attend this meeting will result in your bid being rejected.
 - (b) Prior to bid submittal, the contractor must have attended the mandatory pre-bid meeting, and should have observed actual conditions and verified all dimensions on the job. The job site inspection will occur on the day of the mandatory pre-bid meeting.
 - (c) The **deadline for request for information** will be Monday, May 19, 2023, at 12:00 P.M. (noon).

PROPOSAL AFFIDAVIT

(TO BE COMPLETED AND EXECUTED BY THE PERSON SIGNING THE PROPOSAL.)

COUNTY OF _____

STATE OF _____

_____ being first duly sworn, deposes and says (AFFIANT)

that he/she is the _____ (officer, partner, sole owner, etc.) of

(COMPANY)

A _____ (corporation, partnership, etc.) organized and existing under and by virtue

of the laws of the State of _____, and having its principal offices at

(STREET AND NUMBER)

(CITY)

(COUNTY)

(STATE)

Affiant further says that he is familiar with the records, minute book and by-laws of

_____. Affiant further says that

(COMPANY)

_____ is _____, of the
(AFFIANT) (TITLE)

(corporation, company, or partnership), is duly authorized to sign the PROPOSAL for

for said _____ (corporation, company or partnership)

by virtue of _____ (a provision of by-laws or a resolution of the
board of directors, partnership agreement, or agency.) dated _____.

(AFFIANT)

Subscribed and sworn to before me this

_____ day of _____, 2023

SEAL

Notary Public

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

Project Name "2023 SOUTH CAMPUS BIKE PATH"

Contractor _____,

Being first duly sworn, deposes and says that he/she is the _____ (president, secretary, etc.) of _____, the party making the foregoing proposal; that such proposal is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such proposal is genuine and not collusive or a sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham proposal, or that any one shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of said bidder or any other bidder, or to fix any overhead, profit, or cost element of such bid price, or of that of any other bidder, or to secure any advantage against the Heath-Newark-Licking County Port Authority or anyone interested in the proposed contract; that all statements contained in such proposal are true; and, further, that said bidder has not, directly or indirectly, submitted his bid price or any breakdown thereof, or the contents thereof, or divulged directly or indirectly, submitted its bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and shall not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

AFFIANT

Subscribed and sworn to before me this
_____ Day of _____, 2023

Seal

Notary Public

BIDDER'S STATEMENT OF QUALIFICATIONS

The Bidder is required to state, in detail, in the space provided below, work in the past eight years, to give references and such other detailed information as will enable the Authority to judge his responsibility, experience, skill and financial standing. Proposals from contractors inexperienced in this particular work shall not be considered. Among other things, this statement shall include the following: Evidence that the bidder maintains a permanent place of business; a list of plant equipment available for the work under the proposed contract, together with statements as to when purchased, or otherwise obtained, and statements as to its present physical condition; evidence that the bidder has a suitable financial status to meet obligations incident to the work; and evidence that the bidder has appropriate technical experience. Additionally, all information required in Items 5(a) and (b) must be supplied and verified.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Attach Additional Sheets as Necessary

DELINQUENT PERSONAL PROPERTY TAX AFFIDAVIT

(Revised Code 5719.042)

STATE OF _____

COUNTY OF _____

_____, being first duly sworn, deposes and says that he/she

is (title) _____ of _____,
the successful bidder on the attached contract (Company) with the Heath-Newark-Licking County Port

Authority for _____ and for the (purpose)

of _____ (describe or identify contract)
complying with Section 5719.042 of the Ohio Revised Code, states that at the time the proposal for said

contract was submitted, said bidder _____ charged with delinquent (was / was
not) Personal property taxes on the General Tax list of personal property of a county of the State of Ohio,
and that the amount of due and unpaid delinquent taxes, penalties and interest thereon is as follows:

<u>Taxes</u>	<u>Penalties & Interest</u>	<u>County</u>
\$ _____	\$ _____	_____
\$ _____	\$ _____	_____
\$ _____	\$ _____	_____

Subscribed and sworn to before me this

_____ Day of _____, 2023

SEAL

Notary Public

***** FOR INSTRUCTIONAL USE ONLY *****

READ BEFORE COMPLETING YOUR DMA FORM

Forms not conforming to the specifications listed below or not submitted to the appropriate agency or office will not be processed.

- To complete this form, you will need a copy of the Terrorist Exclusion List for reference. The Terrorist Exclusion List can be found on the Ohio Homeland Security Web site at the following address:

<http://www.homelandsecurity.ohio.gov/dma/dma.asp>

- Be sure you have the correct DMA form. If you are applying for a state issued license, permit, certification or registration, the "State Issued License" DMA form must be completed (HLS 0036). If you are applying for employment with a government entity, the "Public Employment" DMA form must be completed (HLS 0037). If you are obtaining a contract to conduct business with or receive funding from a government entity, the "Government Business and Funding Contracts" DMA form must be completed (HLS 0038).
- Your DMA form is to be submitted to the issuing agency or entity. "Issuing agency or entity" means the government agency or office that has requested the form from you or the government agency or office to which you are applying for a license, employment or a business contract. For example, if you are seeking a business contract with the Ohio Department of Commerce's Division of Financial Institutions, then the form needs to be submitted to the Department of Commerce's Division of Financial Institutions. Do NOT send the form to the Ohio Department of Public Safety UNLESS you are seeking a license from or employment or business contract with one of its eight divisions listed below.
- Department of Public Safety Divisions:

Administration	Ohio Homeland Security*
Ohio Bureau of Motor Vehicles	Ohio Investigative Unit
Ohio Emergency Management Agency	Ohio Criminal Justice Services
Ohio Emergency Medical Services	Ohio State Highway Patrol
- * DO **NOT** SEND THE FORM TO OHIO HOMELAND SECURITY UNLESS OTHERWISE DIRECTED. FORMS SENT TO THE WRONG AGENCY OR ENTITY WILL NOT BE PROCESSED.

***** FOR INSTRUCTIONAL USE ONLY *****

GOVERNMENT BUSINESS AND FUNDING CONTRACTS

In accordance with section 2909.33 of the Ohio Revised Code

DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION

This form serves as a declaration by an applicant for a government contract or funding of material assistance/nonassistance to an organization on the U.S. Department of State Terrorist Exclusion List ("TEL"). Please see the Ohio Homeland Security Division Web site for a copy of the TEL.

Any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, financial services, communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

COMPLETE THIS SECTION ONLY IF YOU ARE AN INDEPENDENT CONTRACTOR

LAST NAME		FIRST NAME		MI
HOME ADDRESS				
CITY	STATE	ZIP	COUNTY	
HOME PHONE		WORK PHONE		

COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS OR ORGANIZATION

BUSINESS/ORGANIZATION NAME			PHONE	
BUSINESS ADDRESS				
CITY	STATE	ZIP	COUNTY	
BUSINESS/ORGANIZATION REPRESENTATIVE NAME			TITLE	

DECLARATION

In accordance with section 2909.32 (A)(2)(b) of the Ohio Revised Code

For each question, indicate either "yes," or "no" in the space provided. Responses must be truthful to the best of your knowledge.

- | | |
|--|--|
| 1. Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List? | ☐ Yes ☐ No |
| 2. Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List? | ☐ Yes ☐ No |
| 3. Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List? | ☐ Yes ☐ No |
| 4. Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List? | ☐ Yes ☐ No |
| 5. Have you committed an act that you know, or reasonably should have known, affords "material support or resources" to an organization on the U.S. Department of State Terrorist Exclusion List? | ☐ Yes ☐ No |
| 6. Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist Exclusion List, or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism? | ☐ Yes ☐ No |

If an applicant is prohibited from receiving a government contract or funding due to a positive indication on this form, the applicant may request the Ohio Department of Public Safety to review the prohibition. Please see the Ohio Homeland Security Web site for information on how to file a request for review.

CERTIFICATION

I hereby certify that the answers I have made to all of the questions on this declaration are true to the best of my knowledge. I understand that if this declaration is not completed in its entirety, it will not be processed and I will be automatically disqualified. I understand that I am responsible for the correctness of this declaration. I understand that failure to disclose the provision of material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List, or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree. I understand that any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided by myself or my organization. If I am signing this on behalf of a company, business or organization, I hereby acknowledge that I have the authority to make this certification on behalf of the company, business or organization referenced above on of this declaration.

APPLICANT SIGNATURE X	DATE
---------------------------------	------

PROPOSAL FORMAT

The proposal shall be organized as follows:

Cover Page

- (a) Name of company
- (b) Address
- (c) Phone number
- (d) Project manager, name and title
- (e) Project title

Work Program for Project

- (a) Methodology and timeline
- (b) Bid Proposal and costs
- (c) Subcontractor list to include their professional experience and credentials.

Business References (2 minimum)

- (a) Information as required under Bidders Responsibilities
- (b) Organization name
- (c) Point of contact
- (d) Address
- (e) Telephone number

Proof of Insurance

- (a) Worker's Compensation certificate
- (b) Certificate of Insurance, Bid guaranty or other statutory security

Additional Required Bid Documents

- (a) Bid Security
- (b) Bidders Statement of Qualifications
- (c) Proposal Affidavit
- (d) Non-Collusion Affidavit
- (e) Delinquent Personal Property Tax Affidavit
- (f) Declaration of Material Assistance

**BID PROPOSAL FOR
"2023 SOUTH CAMPUS BIKE PATH"
HEATH-NEWARK-LICKING COUNTY PORT AUTHORITY**

MAIL BID TO:

Bid: "2023 SOUTH CAMPUS BIKE PATH"
Heath-Newark-Licking County Port Authority
851 Irving Wick Drive West
Heath, Ohio 43056-6114

The undersigned declares that they have familiarized themselves with the location, dimensions, and conditions of the proposed work. Also, that they have carefully examined the Specifications and Contract Documents, accept them as sufficient for the purpose, and agree that they will contract with Heath-Newark-Licking County Port Authority to furnish all labor, materials, all applicable taxes and incidentals to do all of the work specified and/or indicated for the total sum of:

BASE BID* _____
\$ _____

****Include along with this bid form the unit price sheet for this bid with the labor and material costs for each line item.***

Contractor agrees that unit prices quoted shall remain in effect until the completion of the project unless indicated otherwise in the specifications. _____ (initial)

CONTRACTOR SHALL ANSWER AND SUBMIT THE FOLLOWING:

1. Identify the superintendent, foremen and all other supervisory staff, which the Bidder proposes to employ on the project. Show any training from the manufacturer along with the dates training was received, their experience in the industry, their trade or craft the length of their employment with Bidder.

2. Identify all projects in the past 5 years in which the Bidder has experienced cost overruns or project delays. For each project, identify and supply contact information for the owner. Describe the nature, extent, and reason for each cost overrun or delay. Use extra sheet if necessary. If none, so indicate.

**BID PROPOSAL FOR
“2023 SOUTH CAMPUS BIKE PATH”
HEATH-NEWARK-LICKING COUNTY PORT AUTHORITY**

3. Identify all projects in the past 5 years in which the Bidder has been assessed a penalty or liquidated damages. For each project identify and supply contact information for the owner. Describe the nature, extent, and reason for each such failure to meet a project deadline. Use extra sheet if necessary. If none, so indicate.

4. Identify all claims or lawsuits that have been brought against your company in the last five years. For each such claim identify the entity asserting the claim, the date the claim was filed and resolution of the claim. Use extra sheet if necessary. If none, so indicate.

5. Identify all projects in the past three years where Bidder's bonding authority has been notified of non-satisfactory completion of your contract for any reason. Indicate who the bonding company was and provide details of the resolution. Use extra sheet if necessary. If none, so indicate.

6. Provide references for three public projects performed within the past year and at least three projects, public or private with a value equal to or slightly greater than the value of this project.

7. A copy of your "Unit Bid Price Sheet" must be included with this bid form. The Unit Bid Price Sheet will include the unit price for all materials and labor rates used on this project. Failure to include this form will result in the bid being ruled as an incomplete bid.

BID PROPOSAL FOR
“2023 SOUTH CAMPUS BIKE PATH”
HEATH-NEWARK-LICKING COUNTY PORT AUTHORITY

Changes to the Work:

The combined overhead and profit included in the total cost to the Owner for a change in the Work shall be based on the following schedule:

1. For the Contractor, for Work performed by the Contractor's own forces, eight percent of the cost.
2. For the Contractor, for Work performed by the Contractor's Subcontractors, five percent of the amount due the Subcontractors.
3. For each Subcontractor involved, for Work performed by the Subcontractor's own forces, eight percent of the cost.
4. For each Subcontractor involved, for Work performed by the Subcontractor's Subcontractors, five percent of the cost.

Contractor will start: _____ Days from notification to proceed.

Contractor will complete the project in _____ Days from Notice To Proceed.

Acknowledgement of Addenda:

Addendum # 1 _____ (Initial)

Addendum # 2 _____ (Initial)

Addendum # 3 _____ (Initial)

SIGNED: _____

Title: _____

Company _____

Address _____

Phone _____

Date _____

2023 SOUTH CAMPUS BIKE PATH PROJECT CONTRACT COST SHEET

BASE BID

ITEM	DESCRIPTION	TOTAL	UNIT	LABOR COST	MATERIAL COST	TOTAL UNIT COST	SUB TOTAL
202	PIPE REMOVAL, 24" AND UNDER	138	FT				
203	EXCAVATION	601	CY				
203	EMBANKMENT	375	CY				
204	SUBGRADE COMPACTION	3,270	SY				
204	PROOF ROLL	2	HOUR				
203	EXCAVATION OF SUBGRADE (AS DIRECTED)	500	CY				
203	GRANULAR EMBANKMENT, TYPE D (AS DIRECTED)	500	CY				
304	AGGREGATE BASE	363	CY				
407	TACK COAT	165	GAL				
441	ASPHALT CONCRETE, SURFACE COURSE, TYPE 1 (448), PG64-22	121	CY				
441	ASPHALT CONCRETE, INTERMEDIATE COURSE, TYPE 2 (448)	202	CY				
SPECIAL	GAS LINE MARKER, ADJUST TO GRADE	1	EA				
630	REMOVAL OF GROUND MOUNTED SIGN AND REERECTION	5	EA				
630	SIGN w/ SOLAR POWERED RAPID FLASH BEACONS	2	EA				
630	SIGN, FLAT SHEET	15	EA				
630	GROUND MOUNTED SUPPORT, NO. 3 POST	104	EA				
630	SIGNING MISC., MULTI-USE PATH STOP SIGH & POST, COMPLETE, AS PER PLAN	5	EA				
644	CROSSWALK LINE	146	FT				
644	STOP LINE	66	FT				
601	ROCK CHANNEL PROTECTION, TYPE C w/ FILTER	8	CY				

611	12" CONDUIT, TYPE B	164	FT				
611	12" CONDUIT, TYPE B (RCP, 706.02)	155	FT				
611	24"x38" CONDUIT, TYPE B (RCP, 706.04)	4	FT				
611	MANHOLE, ADJUSTED TO GRADE	1	EA				
611	CATCH BASIN ADJUSTED TO GRADE	1	EA				
611	CATCH BASIN (ST-4)	3	EA				
611	END WALL (ST-6)	5	EA				
638	VALVE BOX, ADJUSTED TO GRADE	5	EA				
638	FIRE HYDRANT, ADJUSTED TO GRADE	1	EA				
659	SEEDING AND MULCHING, CLASS 1	4803	SY				
SPECIAL	FILTER FABRIC FENCE	735	FT				
SPECIAL	ROCK CHECK	21	EA				
SPECIAL	INLET PROTECTION	5	EA				
614	MAINTENANCE OF TRAFFIC	1	LUMP				
623	STAKING	1	LUMP				
624	MOBILIZATION	1	LUMP				
TOTAL CONSTRUCTION COST (BASE BID):							

BIDDER'S COMPANY NAME:

SIGNED / TITLE:

(Signature / Print)

Date:



2023 SOUTH CAMPUS BIKE PATH

OWNER'S CONTRACT SPECIFICATIONS

PROJECT DESCRIPTION:

This project involves the installation of a bike path from the Port Authority campus bike path south along the west and east sides of James Parkway and extending to International Dr. This project will cross both James Parkway and Kaiser Dr. The distance of the path is approximately 0.7 miles.

SPECIFICATIONS:

1. A mandatory pre-bid meeting and site tour will be held in the offices of the Port Authority, 851 Irving Wick Drive West, Heath, Ohio, at 10:00 AM on Friday, May 12, 2023.
2. Bids are due by Thursday, May 25, 2023, at 2:00 PM and will be held in the Finance Manager's office of the Port Authority, 851 Irving Wick Drive West, Heath, Ohio at which time the bids will be opened and reviewed. All bids are to be placed in a sealed envelope with the project title on the face of the envelope before presenting to the Port Authority. Bids are to be good for a minimum of ninety days from the date the bids are due.
3. Due to the nature of the Port Authority site, all utilities (gas, telephone, electric, water, storm & sanitary drains, compressed air, communications and etc. may or may not be shown on the plans and are approximate only. The contractor is advised and cautioned to work closely with the Ohio Utilities Protection Service and the Port Authority Construction Site Manager prior to and during demolition.
4. Prior to bidding the contractor shall, by personal examination, satisfy him/herself as to the location of the proposed work and to acquaint him/herself thoroughly with the existing conditions and the difficulties that are likely to be encountered in the performance of the proposed work.
5. The COATC Campus has a tobacco free policy that prohibits the use of all tobacco products on all Port Authority property. Every contractor employee, supplier, subcontractor and anyone else coming on site for this project will abide by this policy or they will be asked to leave the property.
6. The contractor shall employ and maintain a qualified superintendent and an on-site, qualified, foreman, acceptable to the Port Authority, who shall have been designated in writing as the contractor's representative for the work, and shall have full authority to act on behalf of the Contractor and its subcontractors, execute orders or directions of the Port Authority Representative without delay and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required. The Contractor shall at all times furnish sufficient skilled workers to perform the Work in strict conformance with the Contract Documents, to the satisfaction of the Owner and so as not to delay any part of the Project.
7. The contractor shall notify the Port Authority at least five (5) days prior to beginning work, holidays and weekends excluded.

8. Work hours for this project will be 7:00 AM to 4:00PM Monday through Friday unless prior arrangements have been made with the Port Authority. No work is to be conducted on Port Authority holidays without the prior approval of the Port Authority Construction Site Manager.
9. The tracking of mud, dirt, asphalt, debris or spillage of the same upon streets, drives, parking lots or sidewalks is to be cleaned up immediately by the contractor.
10. The contractor shall provide to the Port Authority a list of all primary suppliers and subcontractors with phone numbers and contact names that will be used on this project.
11. The contractor on projects lasting longer than two (2) weeks shall hold weekly meetings to update Port Authority management on project status.
12. Guns, weapons and explosives are not permitted on Port Authority property.
13. Notice must be given one day in advance of any jack hammer, milling work or any process creating vibration due to the nature of our tenant's work load on this site.
14. Traffic must be maintained on along James Pkwy during work hours.
15. The contractor shall establish a construction safety zone. The construction zone will be signed as such.
16. The contractor shall repair any damages caused to the surrounding site as a result of their work or actions. This work will be at the contractor's expense.
17. The contractor will provide on the bid form an estimated number of days needed to complete this project.
18. An aerial view of the South campus Bike path layout is included as "EXHIBIT – A".

EXHIBIT – A



NOTICE OF INTENT TO AWARD CONTRACT

DRAFT

To: _____

Description of Goods or Services: **"2023 SOUTH CAMPUS BIKE PATH"**

The Heath-Newark-Licking County Port Authority ("Authority") has considered the proposal submitted by you on May 25, 2023, for the above described work in response to its Advertisement for Bids, Information for Bidders, and Specifications.

You are hereby notified that the Authority intends to award you a contract for the above described goods or services in the amount of _____ pursuant to the attached Contract. No award shall be final until the contract is signed first by the Bidder and then by the Authority. Until the contract is fully executed by both parties, the Authority reserves the right to reject any or all bids for any or no reason in its sole discretion.

You are required by the Information for Bidders to furnish the required contract and payment bond for 100% of the bid price, and Contract Affidavit within ten (10) calendar days from the date of this notice to you. You will also be required within that same time period, to verify, by signing and/or initialing, the information you submitted as part of your bid packet.

If you fail to execute said contract bond and Contract Affidavit within ten (10) days from the date of this notice, the Authority shall be entitled to consider this Notice of Intent to Award Contract rescinded, and your Bid Guaranty forfeited. The Authority shall be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Intent to Award Contract to the Authority within two (2) days of receipt hereof.

Dated this _____ day of _____, 2023

HEATH-NEWARK-LICKING COUNTY
PORT AUTHORITY

By: _____
Richard J. Platt
President and CEO

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by _____
this _____ day of _____, 2023

Name

Title

CERTIFICATE

DRAFT

“2023 SOUTH CAMPUS BIKE PATH”

The undersigned Fiscal Officer of the Heath-Newark-Licking County Port Authority, Heath, Ohio, certifies that the moneys required to meet the obligations of the Port Authority during 2023 under the foregoing Agreement or Lease have been appropriated by the Board of Directors of such Port Authority for such purposes and are in the treasury of the Port Authority or in process of collection to the credit of an appropriate fund, free from any encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

By: _____

Jason Carr
Fiscal Officer
Heath-Newark-Licking County Port Authority

CONTRACT AFFIDAVIT

(TO BE FILLED IN AND EXECUTED BY THE PERSON SIGNING THE CONTRACT)

COUNTY OF _____

STATE OF _____

_____, being first duly sworn, deposes and says that he is
(AFFIANT)

_____ (Officer, partner, sole owner, etc.) of _____,
(TITLE) (COMPANY)

a _____ (corporation, partnership, etc.) organized and existing under and by
virtue of the laws of the State of _____, and having its principal offices
at

(STREET AND NUMBER) (CITY) (COUNTY) (STATE)

Affiant further says that he is familiar with the records, minute books and by-laws of

_____. Affiant further says that _____ is
(COMPANY) (NAME-OTHER THAN AFFIANT)

_____, of the Corporation, Company, or Partnership is duly
(TITLE)

authorized to sign the CONTRACT for _____, for said
_____.

(Corporation, partnership, etc.) By virtue of _____ (a resolution of the board of directors,
partnership agreement, or agency agreement), dated _____.

(AFFIANT)

Subscribed and sworn to before me this

_____ Day of _____, 2023

SEAL

Notary Public

"DRAFT" OWNER-CONTRACTOR AGREEMENT

"2023 SOUTH CAMPUS BIKE PATH"

Owner

The Board of Directors of the
Heath-Newark-Licking County Port Authority
851 Irving Wick Drive West
Heath, Ohio 43056-69114
Phone: 740.788.5500
Fax: 740.788.5511

Contract

Contractor:
Address:

Phone:
Fax

Date: _____

This document is an agreement between the Owner and the Contractor for the Work described below entered into as of the date set forth above ("Agreement").

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

1. WORK.

THE CONTRACTOR SHALL FURNISH ALL THE LABOR, SERVICES, MATERIALS, PLANT, EQUIPMENT, TOOLS, SCAFFOLDS, APPLIANCES, AND ALL OTHER THINGS (COLLECTIVELY CALLED THE "WORK") NECESSARY FOR THE TIMELY AND PROPER COMPLETION OF THE PROJECT, AS DEFINED IN THE CONTRACT DOCUMENTS. THE CONTRACTOR SHALL PERFORM THE WORK IN STRICT CONFORMANCE WITH THE CONTRACT DOCUMENTS.

The Work is part of the improvements being constructed by the Owner, which is a political subdivision of the State of Ohio. Such improvements are collectively called the "Project" as is defined in the Instructions to Bidders.

In performing the Work, the Contractor shall proceed so as to complete its Work as the Contract Documents require and, to the extent applicable to the Contractor's Work, in accordance with the Project Time Schedule prepared pursuant to Paragraph 4.1 of this Agreement and any changes thereto made in writing and approved by the Owner. The Contractor shall employ and maintain a qualified superintendent and an on-site qualified foreman, acceptable to the Owner, who shall have been designated in writing as the contractor's representative for the work, and shall have full authority to act on behalf of the Contractor and its subcontractors, execute orders or directions of the Owner's Representative (defined below) without delay and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required. The Contractor shall at all times furnish sufficient skilled workers, materials, and equipment to perform the Work in strict conformance with the Contract Documents, to the entire satisfaction of the Owner and so as not to delay any part of the Project. Unless otherwise expressly provided for in the Contract Documents, the Contractor warrants that all materials and equipment provided shall be new, free from all defects, conform to the Contract Documents, and fit for the purpose for which they are intended.

2. CONTRACT DOCUMENTS.

THE CONTRACT DOCUMENTS CONSIST OF THE SCOPE OF WORK, SPECIFICATIONS AND RELATED INFORMATION PROVIDED TO THE CONTRACTOR BY THE OWNER, THE CONTRACTOR'S PROPOSAL, AND ANY MODIFICATIONS TO THE SPECIFICATIONS ISSUED SUBSEQUENT TO THE EXECUTION OF THIS AGREEMENT. THE CONTRACTOR REPRESENTS FOR THE RELIANCE OF THE OWNER AND AGREES THAT IT HAS CAREFULLY EXAMINED THE CONTRACT DOCUMENTS, THAT IT UNDERSTANDS THIS AGREEMENT, AND THAT IT HAS CAREFULLY INVESTIGATED THE NATURE, LOCALITY, AND SITE OF THE WORK, WHICH

INCLUDES CONFIRMATION OF THE LOCATION OF THE SITE UTILITIES AND ANY EXISTING STRUCTURES, CONFIRMATION AS TO THE CONDITIONS AND THE DIFFICULTIES UNDER WHICH THE WORK IS TO BE PERFORMED, REVIEW OF ANY DRAWINGS AND SPECIFICATIONS FOR COMPLETENESS AND COORDINATION TO THE SATISFACTION OF THE CONTRACTOR, AND CORRELATION OF THE RESULTS OF THIS INVESTIGATION WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS. IN THE EVENT OF A CONFLICT BETWEEN THIS AGREEMENT AND ANY OF THE OTHER CONTRACT DOCUMENTS, THE TERMS OF THIS AGREEMENT SHALL CONTROL.

2.1 INTENT OF THE CONTRACT DOCUMENTS.

The intent of the Contract Documents is to include all labor, equipment, and materials necessary for the proper and timely execution and completion of the Work, even though such labor, equipment, and materials are not expressly included in the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. The Contractor shall be required to perform all parts of the Work.

3. OWNER'S REPRESENTATIVE.

JOHN VERMAATEN, DIRECTOR OF FACILITIES AND OPERATIONS, FOR THE OWNER, SHALL BE THE OWNER'S REPRESENTATIVE WITH RESPECT TO ALL MATTERS INVOLVING THE OWNER. ALL COMMUNICATIONS WITH THE OWNER SHALL BE THROUGH MR. VERMAATEN. THE OWNER'S REPRESENTATIVE AUTHORITY TO ACT FOR THE OWNER SHALL BE LIMITED TO THAT AUTHORITY EXPRESSLY SET FORTH IN THE CONTRACT DOCUMENTS AND AS PROVIDED BY LAW, INCLUDING, BUT NOT LIMITED TO R.C. 5705.41.

4. TIME FOR COMPLETION AND PROJECT COORDINATION.

4.1 DATE FOR SUBSTANTIAL COMPLETION.

The Date for Substantial Completion of the Project is ninety calendar days after notice to proceed.

4.2 PROJECT TIME SCHEDULE.

The Contractor shall submit schedule(s) for completion of each component of the Work, with an accompanying schedule of values, for the Project to the Owner within ten (10) days of execution of this Agreement. The Contractor's proposed schedule shall be consistent with the date for substantial completion established in this Agreement.

If requested by the Owner, the Contractor shall create a revised schedule for the completion of the Contractor's Work consistent with the Date for Substantial Completion and shall attend any and all scheduled meetings called by the Owner for the purpose of reviewing the Project Time Schedule. The Contractor shall submit the revised schedule to the Owner in the form prescribed by the Owner. The Contractor shall submit the revised schedule within ten (10) days of the Owner's request.

4.3 TIME IS OF THE ESSENCE.

THE PERIODS IN THE PROJECT TIME SCHEDULE AND THE DATE (S) FOR SUBSTANTIAL COMPLETION ARE OF THE ESSENCE OF THIS AGREEMENT. THE CONTRACTOR SHALL PROSECUTE ITS WORK DILIGENTLY IN ACCORDANCE WITH THE PROJECT TIME SCHEDULE, INCLUDING ANY AMENDMENTS THERETO AND SPECIFICALLY INCLUDING THE MILESTONE START/COMPLETION DATE SCHEDULE APPLICABLE TO THE CONTRACTOR'S WORK.

4.3.1 NOTICE OF DELAYS.

The Contractor shall give the Owner written notice of any delay affecting its Work in the form and with the information specified in the Contract Documents within forty-eight (48) hours of the commencement of the delay. The Owner has the right to extend the 48-hour notice in the event of unusually severe weather conditions not reasonably anticipatable. The failure to give the required

notice shall constitute a condition precedent to the Contractor's right to seek an extension of time and/or additional compensation/damages for the delay. The only delays for which the Contractor shall be entitled to an extension of the time for completion are Excusable Delays. Any extensions of time shall only be granted upon application by the Contractor to the Owner, including all information upon which the extension is granted and any additional information requested by the Owner, and execution of a Change Order changing the date for completion of the Project approved by the Owner and Contractor.

4.3.2 EXCUSABLE DELAYS.

Excusable Delays are delays for which the Contractor is entitled to an extension of its Date for Substantial Completion. Whether the Contractor is entitled to additional compensation/damages for Excusable Delays shall be determined in accordance with Subparagraph 4.3.3. The following are Excusable Delays under this Agreement:

- i) delays caused by the Owner (such delays shall not constitute a breach of contract by the Owner and are within the contemplation of the parties);
- ii) physical damage to the Project over which the Contractor has no control and which was not caused in whole or in part by the Contractor or any of Contractor's affiliates, subcontractors or material suppliers;
- iii) labor disputes beyond control of the Contractor;
- iv) unusually severe weather conditions not reasonably anticipatable; and/or
- v) concealed or unknown conditions for which the Contractor is entitled to an extension of time.

The Owner may consider other delays submitted by the Contractor and in the Owner's sole discretion may determine that such a delay is excusable.

4.3.3 COMPENSABLE DELAYS.

Compensable Delays are Excusable Delays for which the Contractor may be entitled to additional compensation/damages under this Subparagraph 4.3.3. The following Excusable Delays are Compensable Delays under this Agreement:

- i) delays caused by the Owner (such delays shall not constitute a breach of contract by the Owner and are within the contemplation of the parties);
- ii) physical damage to the Project over which the Contractor has no control and which was not caused in whole or in part by the Contractor or any of Contractor's affiliates, subcontractors or material suppliers; and/or
- iii) concealed or unknown conditions for which the Contractor is entitled to an extension of time.

No other delays shall be Compensable Delays and the Contractor shall not be entitled to any additional compensation/damages for such delays, unless the Owner, in its sole discretion determines that such a delay is compensable.

4.3.4 ACCELERATION OF THE WORK.

The Owner may require the Contractor to accelerate its Work by adding workers or working additional shifts, extended shifts or overtime, so that the Work is complete before the Contractor's Date for Substantial Completion. If the Owner requires the Contractor to accelerate its Work, for the purpose of early completion, the Contractor shall within five (5) days take the required action, and the Owner thereafter shall issue a Change Order increasing the Contract Sum to pay the Contractor for the Contractor's additional costs of accelerating its Work so that the Contractor's Work is complete before the Contractor's Date for Substantial Completion. If there is a dispute as to whether the Contractor is entitled to a Change Order for accelerating its Work, the Contractor shall proceed to accelerate its Work without waiting for a Change Order or payment of any additional compensation, but may reserve its right to make a claim against the Owner for its additional costs incurred in accelerating its Work. The Contractor's additional costs for accelerating its Work shall be determined in accordance with Subparagraph 4.3.5.3.

4.3.5 COMPENSATION FOR COMPENSABLE DELAYS AND ACCELERATION OF THE WORK.

4.3.5.1 OWNER'S OBLIGATION TO PAY.

Provided that the Contractor performs all conditions precedent required by this Agreement, the Owner shall pay the Contractor, as provided in this Subparagraph 4.3.5.1, (i) for Compensable Delays, and (ii) for the Contractor accelerating its Work so that its Work is complete before the Contractor's Date for Substantial Completion. The Owner shall not be required to compensate the Contractor for accelerating its Work so that the Contractor's Work is complete by the Contractor's Date for Interim or Substantial Completion as established in the scheduling documents.

4.3.5.2 COMPENSATION FOR COMPENSABLE DELAYS.

To the extent there is a Compensable Delay, the Owner shall pay the Contractor additional compensation for costs attributable to the Contractor's delay, as defined in this Subparagraph 4.3.5.2, for the days of the Contractor's delay. Such compensation shall consist of the following additional costs to the extent they are attributable to the Compensable Delay: (a) the additional cost of labor, (b) increases in the purchase price of equipment and materials, (c) additional out of pocket costs for the storage of equipment and materials, (d) additional cost of non-working supervisors, (e) additional out of pocket cost of the insurance coverage and the surety bond required by the Contract Documents, (f) additional out of pocket cost of equipment leased or rented from non-affiliates (but not equipment owned by the Contractor or its affiliates), (g) additional out of pocket cost of any on-site project office for the rental of the office, basic phone service, gas, water, and electricity, and (h) overhead, including home office overhead, and profit at the combined total rate of ten percent (10%) of the total amount of the other items for which additional compensation is permitted under this Subparagraph 4.3.5.2. "Out of pocket costs" includes only those costs paid to persons independent of the Contractor, with documentation available to the Owner for support of the claimed costs. The foregoing shall be the only additional compensation or damages the Contractor shall be entitled to receive for the period of delay. As a condition precedent to its recovery of additional compensation, the Contractor shall provide the Owner with full information about its delay costs evidencing the payment by the Contractor of such amounts in the form and format requested by the Owner.

4.3.5.3 COMPENSATION FOR ACCELERATION OF WORK.

To the extent that the Owner requires the Contractor to accelerate its Work so that the Contractor's Work is complete before the Contractor's Date for Substantial Completion as established on the applicable scheduling documents, the Owner shall pay the Contractor for the Contractor's additional costs of accelerating its Work, as determined in accordance with this subparagraph. The additional costs of accelerating the Contractor's work shall be (a) any additional charges paid by the Contractor pursuant to the applicable employee or union agreement for the employees performing overtime, additional shift work, or extended shift work required to accelerate the Work, (b) the additional cost of any additional supervision or general conditions required by the acceleration, (c) out of pocket cost of any additional equipment required for the acceleration, (d) to the extent the Contractor can document lost productivity due to the acceleration, the cost associated with such lost productivity, and (e) overhead, including home office overhead, and profit equal to a combined total of ten percent (10%) of the total amount of the other items for which additional compensation is permitted under this Subparagraph 4.3.5.3. The foregoing shall be the only additional compensation and/or damages the Contractor shall be entitled to receive for accelerating its Work so that it is complete before the Contractor's Date for Substantial Completion. As a condition precedent to its recovery of additional compensation, the Contractor shall provide the Owner with full information

evidencing the costs paid as a result of accelerating its Work in the form and format requested by the Owner.

4.3.6 NOTICE FOR WEEKEND, AFTER-HOURS, AND HOLIDAY WORK.

The Contractor shall give the Owner at least twenty-four (24) hours written notice before working on any weekend, Boeing holiday, or after normal working hours for a single day shift. The Owner, in its sole discretion, may waive the requirement for twenty-four (24) hours written notice. ALL WAIVERS SHALL BE IN WRITING TO BE EFFECTIVE AND SHALL BE SIGNED BY THE OWNER'S REPRESENTATIVE OR SUCH PERSON AUTHORIZED IN WRITING BY THE OWNER'S REPRESENTATIVE TO SIGN SUCH WAIVER.

The Contractor shall only be entitled to additional compensation for work on weekends and holidays and after-hours to the extent expressly provided under other provisions in the Contract Documents and with the prior written approval of the Owner. Giving the notice required under this Subparagraph 4.3.6 does not of itself entitle the Contractor to any such additional compensation.

4.3.7 LIQUIDATED DAMAGES.

If the Contractor does not have its Work on the Project substantially complete by the Contractor's Date for Substantial Completion, the Contractor shall pay the Owner (and the Owner may set off from sums coming due the Contractor) liquidated damages of **\$500.00 for each calendar day** beyond the Contractor's Date for Substantial Completion, as such date may be extended in accordance with the terms of the Contract Documents. In addition to the Owner's right to Liquidated Damages, the Contractor shall indemnify, defend, and hold the Owner and its employees harmless from any delay, acceleration, loss of productivity, or other claims by third parties relating to or resulting from delays caused by the Contractor and from all costs and expenses incurred as a result of such claims, including but not limited to attorney's and consultant's fees.

The Contractor acknowledges that such amounts of liquidated damages represent a reasonable estimate of the actual damages that the Owner would incur if the Work is not substantially complete by the dates established in the Project Time Schedule for Substantial Completion. The foregoing liquidated damages represent the loss of use of the Project.

4.4 PROJECT COORDINATION AND CLEAN UP.

The Contractor shall be responsible for coordinating its Work with the work of any other subcontractors and material suppliers on the Project. For this purpose and as appropriate, the Contractor shall hold coordination meetings, either independently or as part of the weekly project meetings, at least weekly until Substantial Completion of its Work. The Contractor shall cooperate with other subcontractors and material suppliers to allow them opportunity for the introduction of equipment and materials and the proper completion of their work. The Contractor shall supply sufficient skilled workers, clean up the Project, and furnish the necessary materials, equipment, and any temporary services or facilities to perform the Work to the entire satisfaction of the Owner and so as not to delay any part of the Project. For purposes of this Agreement, cleaning up the Project during the progress of the Work and at the conclusion of the Work includes the following: removal of all spillage and tracking resulting from performance of the Work from streets, drives, sidewalks and hallways in and around the Project site by the Contractor and its Subcontractors, establishment by the Contractor of a regular maintenance program of sweeping the Project site, both interior and exterior as needed, to minimize accumulation of dirt and dust, removal of all debris from the Project site by the Contractor, and leaving the interior and exterior areas of the Project free of debris and dirt. In addition to general broom cleaning of the interiors of the area included in the Project, at the completion of the Work the Contractor shall perform the final cleaning for all parts of the Work, and remove temporary protections, if any.

4.5 CORRECTIVE ACTION.

If the Owner determines that the Contractor is not cooperating or coordinating its work properly with other subcontractors and material suppliers, not supplying sufficient skilled workers, not cleaning up the Project, not furnishing the necessary materials, equipment, or any temporary services or facilities to perform the Work in strict conformance with the Contract Documents, or the Contractor is not on schedule, or is not otherwise performing its obligations under the Contract Documents, THE CONTRACTOR SHALL IMMEDIATELY, AND IN NOT LESS THAN FORTY-EIGHT HOURS (48)

AFTER NOTICE OF SUCH DETERMINATION, OR SUCH LESSER TIME AS MAY BE PROVIDED IN THE CONTRACT DOCUMENTS, (1) COMMENCE SUCH ACTION AS IS NECESSARY TO CORRECT THE DEFICIENCIES NOTED BY THE OWNER, (2) PROCEED TO USE ITS BEST EFFORTS TO CORRECT SUCH DEFICIENCIES WITHIN THIRTY (30) DAYS OF SUCH NOTICE AND/OR, (3) IF THE OWNER INSTRUCTS THE CONTRACTOR TO TAKE SPECIFIED CORRECTIVE ACTION, THE CONTRACTOR IMMEDIATELY SHALL TAKE SUCH CORRECTIVE ACTION, including but not limited to increasing the number of skilled workers working additional shifts, extended shifts, and/or overtime, providing temporary services or facilities, and/or cleaning up the Project. Such corrective action shall be taken and continued uninterruptedly without waiting to initiate or resolve any dispute under this Agreement.

5. CONTRACT SUM.

THE LUMP SUM CONTRACT SUM TO BE PAID BY THE OWNER TO THE CONTRACTOR, AS PROVIDED HEREIN, FOR THE SATISFACTORY PERFORMANCE AND COMPLETION OF THE WORK AND ALL OF THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS AGREEMENT AND THE CONTRACT DOCUMENTS SHALL BE . THE CONTRACT SUM INCLUDES ALL FEDERAL, STATE, COUNTY, MUNICIPAL, AND OTHER TAXES IMPOSED BY LAW, INCLUDING BUT NOT LIMITED TO ANY SALES, USE, AND PERSONAL PROPERTY TAXES PAYABLE BY OR LEVIED AGAINST THE CONTRACTOR ON ACCOUNT OF THE WORK OR THE MATERIALS INCORPORATED INTO THE WORK. THE CONTRACTOR SHALL PAY ANY SUCH TAXES DUE. THE OWNER IS A POLITICAL SUBDIVISION OF THE STATE OF OHIO. BUILDING MATERIALS THAT THE CONTRACTOR PURCHASES FOR INCORPORATION INTO THE PROJECT SHALL BE EXEMPT FROM STATE SALES AND USE TAXES IF THE CONTRACTOR PROVIDES A PROPERLY COMPLETED SALES TAX EXEMPTION CERTIFICATE, EXECUTED BY THE CONTRACTOR AND THE OWNER, TO THE VENDORS OR SUPPLIERS WHEN THE MATERIALS ARE ACQUIRED. THE OWNER SHALL EXECUTE PROPERLY COMPLETED CERTIFICATES UPON REQUEST. ANY CHANGES TO THE CONTRACT SUM, WHETHER ADDITIVE OR DEDUCTIVE, SHALL BE ACCOMPLISHED THROUGH THE SUBMISSION OF CHANGE ORDERS BY THE CONTRACTOR TO THE OWNER AND APPROVAL OF THE SAME BY THE OWNER. THE CONTRACTOR SHALL PROVIDE THE OWNER WITH ANY ADDITIONAL INFORMATION REQUESTED TO SUBSTANTIATE THE CHANGE REQUESTED BY CHANGE ORDER. ONCE A CHANGE ORDER INCREASING THE CONTRACT SUM IS APPROVED, THE AMOUNT OF THE CHANGE ORDER SHALL BE INCLUDED WITH THE SUBSEQUENT PAYMENT APPLICATION SUBMITTED BY THE CONTRACTOR. WITHOUT PREJUDICE TO ANY OF THE OWNER'S RIGHTS AND REMEDIES UNDER THE CONTRACT DOCUMENTS, IF THE CONTRACTOR FAILS TO SUBMIT PAYMENT APPLICATIONS AND ANY REQUIRED DOCUMENTATION, AND THE OWNER HAS PROVIDED WRITTEN NOTICE OF SUCH FAILURE, BUT THE CONTRACTOR HAS NOT RESPONDED, THEN, NOT LESS THAN NINETY (90) DAYS AFTER THE WRITTEN NOTICE TO THE CONTRACTOR TO DO SO HAS BEEN PROVIDED TO THE CONTRACTOR, THE BALANCE OF THE CONTRACT SUM SHALL REMAIN AND BECOME THE SOLE POSSESSION OF THE OWNER.

5.1 CHANGE ORDERS.

A Change Order is a modification of the Contract Documents resulting in a change in the time for Substantial Completion, the Contract Sum, or both, or a change in the Work without change in either the Contract Sum or time for Substantial Completion. All Change Orders shall be in writing, signed by the Contractor and the Owner's Representative before work commences on the changed work, and when signed shall constitute a final settlement of all matters relating to the Change Order, including all impact costs incurred by Contractor through the date of the Change Order. Requests for a Change Order and all required documentation for the Change Order shall be submitted to the Owner no later than ten (10) days after the event giving rise to the change. The Contractor's failure to submit the required documentation within the required ten (10) day timeframe shall constitute a waiver of all claims for additional sums or additional time associated with the change.

6. PAYMENT/RETAINAGE.

6.1 AMOUNT OF PAYMENTS.

WITHIN 10 DAYS OF EXECUTION OF THIS AGREEMENT, THE CONTRACTOR SHALL PROVIDE THE OWNER WITH A SCHEDULE OF VALUES FOR THE PROJECT, BOTH LABOR AND MATERIALS, SET FORTH. THE OWNER SHALL MAKE MONTHLY PROGRESS PAYMENTS TO THE CONTRACTOR BASED UPON THE MONTHLY PAYMENT APPLICATIONS SUBMITTED BY THE CONTRACTOR TO THE OWNER BY THE FIFTH DAY OF EACH MONTH FOR WORK PERFORMED DURING THE PRECEDING THIRTY-DAY PERIOD AND IN ACCORDANCE WITH THE SCHEDULE OF VALUES. Within thirty (30) days after the Owner's receipt of the payment application and following its review and approval of the payment application, the Owner shall pay the Contractor the amount due, less any amounts for retainage or otherwise due the Owner as provided herein. The Contractor shall submit with each payment application a lien waiver in the amount of any funds received by the Contractor from the Owner as payment under this Agreement to date; the Contractor shall also provide the Owner with lien waivers from each of its subcontractors and material suppliers providing labor and/or materials to the Project during the period for which the payment application is submitted. Upon final payment, the Contractor shall provide the Owner with a final lien waiver in the full amount of ALL PAYMENTS MADE, INCLUDING FINAL PAYMENT, UNDER this Agreement.

6.1.1 PAYMENTS FOR LABOR.

Payments for labor incorporated into the Work shall be at the rate of 92% of the amount set forth in the Contractor's payment application and approved by the Owner until the Work is 50% complete. When the Work is 50% complete, the payment for labor incorporated into the Work shall be at the rate of 100% of the amount set forth in the Contractor's payment application and approved by the Owner.

6.1.2 PAYMENTS FOR ALL ITEMS OTHER THAN LABOR.

Payments for all items other than Labor shall be at the rate of 92% of the invoice cost (not to exceed the bid price of any unit prices) of materials and equipment delivered to the Project site or other storage site approved by the Owner or the actual cost of any other item. The balance of the invoice cost shall be payable when the materials or equipment are incorporated into the Work. Incorporated into the Work means such materials and equipment are installed and conform to the requirements of the Contract Documents, including all operational requirements. When the payment is made on account of materials or equipment not yet incorporated into the Project, such materials and equipment shall become the property of the Owner; provided that if such materials or equipment are stolen, destroyed, or damaged before being fully incorporated into the Project, the Contractor shall be required to replace them at its own expense. The Owner shall have no obligation to insure against the loss of stored materials or equipment, unless expressly required by this Agreement.

6.1.3 PAYMENTS OTHER THAN FOR LABOR, MATERIALS, OR EQUIPMENT.

Payments for other than labor, materials or equipment incorporated into the Work shall be at the rate of 92% of the amount set forth in the Contractor's payment application and approved by the Owner until the Work is 50% complete. When the work is 50% complete, the payment for other than labor, materials, or equipment incorporated into the Work shall be at the rate of 100% of the amount set forth in the Contractor's payment application and approved by the Owner.

6.2 DOCUMENTATION.

Upon request, the Contractor immediately shall supply the Owner with such information as may be requested so as to verify the amounts due to the Contractor, including but not limited to, original invoices for materials and equipment and documents showing that the Contractor has paid for such materials and equipment, and so as to verify that amounts due laborers, Subcontractors, and material men have been paid to them. The failure to provide such information as may be requested by the Owner shall justify withholding payment to the Contractor.

6.3. ESCROW ACCOUNT.

The Owner and the Contractor agree that any escrow account required in connection with this Agreement shall be established at a bank or building and loan association in the State of Ohio used by the Owner, and that the escrow agent shall be compensated for its services, if it incurs any expenses in the establishment and maintenance of the account, in accordance with the schedule approved by the Owner from income from the escrow account.

7. DEFAULT OF THE CONTRACTOR.

7.1 EVENTS OF DEFAULT.

Each of the following constitutes an event of default of the Contractor:

7.1.1 The Contractor's failure to perform any of its obligations under the Contract Documents or under the contract documents pertaining to any other agreement which the Contractor has with the Owner and to proceed to commence to correct such failure within forty-eight (48) hours after written notice thereof from the Owner or such lesser time as is provided in the Contract Documents.

7.1.2 The Contractor's failure, after receiving the written notice referenced in the preceding subparagraph of the Contractor's failure to perform any of its obligations under the Contract Documents or under the contract documents pertaining to any other agreement which the Contractor has with the Owner, to use its best efforts to correct such failure.

7.1.3 The Contractor's failure, except when an extension of time is granted in writing by the Owner, to correct any defective or nonconforming Work in accordance with Subparagraph 4.5 hereof.

7.1.4 The Contractor's failure to pay its obligations as they become due or the Contractor's insolvency.

7.1.5 The Contractor being placed in bankruptcy or receivership, voluntarily or otherwise or the assignment of Contractor's assets for the benefit of any creditor,

7.2 OWNER'S REMEDIES.

Upon the occurrence of an event of default the Owner shall have the following remedies, which shall be cumulative:

7.2.1 To order the Contractor to stop the Work or part of it, in which case the Contractor shall do so immediately;

7.2.2 To perform through others all or any part of the Contractor's Work remaining to be done and to deduct the cost thereof from the unpaid balance of the Contract Price;

7.2.3 To terminate this Agreement and upon 24 hours written notice to the Contractor, take possession of, for the purpose of completing the Work or any part of it, all materials and equipment purchased to be incorporated into the Project, and to employ any person or persons to complete the Work, including the Contractor's employees, and the Contractor shall not be entitled to receive any further payment until the Work is completed; and/or,

7.2.4 All other remedies which the Owner may have at law or in equity or otherwise under the Contract Documents.

7.3 TERMINATION OF AGREEMENT.

The termination of this Agreement shall be without prejudice to the Owner's rights and remedies, shall not void any warranties, and shall preserve the Owner's right to be indemnified by the Contractor as provided herein.

7.4 PAYMENTS DUE CONTRACTOR.

If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, and any costs, expenses, or damages incurred by the Owner as a result of the event of default, including attorneys' and consultants' fees and the administrative expense of the Owner's staff, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amounts to be paid by the Owner to the Contractor shall be certified by the Owner, and

such certification shall be the final determination of the amount owed, except for sums coming due thereafter. The obligations under this paragraph shall survive the termination of this Agreement.

8. DEFAULT OF THE OWNER.

8.1 EVENTS OF DEFAULT.

Except for the Owner's failure to pay the Contractor, which shall be subject to the terms of this Agreement, the following constitutes the exclusive event of default of the Owner: (1) The failure of the Owner to perform any of its obligations under the Contract Documents and to correct such failure within thirty (30) days after written notice thereof from the Contractor specifying the default and the necessary corrective action. Delay in completion of the Work caused by the Owner shall not constitute an event of material default, but shall instead be compensable as provided in this Agreement.

8.2 CONTRACTOR'S REMEDY.

The Contractor's sole and exclusive remedy for the default of the Owner, other than the failure of the Owner to pay the Contractor, shall be to bring a suit for damages in the Common Pleas Court of Licking County. The Contractor's right to exercise that remedy shall be subject to its giving the Owner the required notices and following any other procedures required by the Contract Documents.

9. LIMITATION ON LIABILITY.

THE OWNER'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT SET FORTH AS THE CONTRACT SUM AND AS CERTIFIED BY THE AUDITOR OR TREASURER'S CERTIFICATE ACCOMPANYING THIS AGREEMENT AND AS MODIFIED BY CHANGE ORDER(S). UNDER NO CIRCUMSTANCES SHALL THE ELECTED OFFICIALS, OFFICERS, EMPLOYEES, BOARD MEMBERS, OR AGENTS OF THE OWNER BE PERSONALLY LIABLE FOR ANY OBLIGATIONS OR CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

10. GENERAL.

10.1 MODIFICATION.

No modification or waiver of any of the terms of this Agreement or of any other Contract Documents shall be effective against a party unless set forth in writing and signed by or on behalf of a party, which in the case of the Owner shall require the signature of the Owner's Representative for the Owner. Under no circumstances shall forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this paragraph.

10.2 ASSIGNMENT.

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

10.3 LAW AND JURISDICTION.

All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligation of the parties shall be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought only in the Licking County Common Pleas Court, Licking County, Ohio, which each party agrees shall have exclusive venue and jurisdiction. Interest on any amounts found to be owing by Contractor to Owner under this Agreement in any judicial proceeding shall accrue at the rate of 10% per annum, or at the rate specified by Ohio law regarding prejudgment interest, whichever is greater, and shall accrue from the date such amounts accrued. Otherwise, there shall be no interest on any amounts otherwise due under this Agreement.

10.4 NOTICES.

Notices, requests, or demands by any party shall be in writing, unless otherwise expressly authorized, and shall be personally served, forwarded by expedited messenger service, sent by facsimile transmission, or be given by registered or certified mail, return receipt requested, postage pre-paid,

and, in the case of the Owner, addressed to the address/FAX number set forth at the beginning of this Agreement and marked "Urgent, deliver to the Director of Facilities & Operations of the Heath-Newark-Licking County Port Authority," at 851 Irving-Wick Drive, Heath, OH 43056-6114, and, in the case of the Contractor, addressed to its address/FAX number set forth at the beginning of this Agreement. Any party may change its address/FAX number by giving notice hereunder. All notices, requests, and demands shall be deemed received upon personal delivery of the notice, request, or demand to the address set forth in this Agreement during the hours of 8:00 a.m. and 4:00 p.m.; upon the expiration of forty-eight (48) hours from the time of deposit in the United States mail; or, in the case of a notice given by facsimile transmission, upon the expiration of twenty-four (24) hours after the transmission is sent.

10.5 CONSTRUCTION.

The parties acknowledge that each party has reviewed this Agreement and the other Contract documents and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

10.6 APPROVALS.

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

10.7 PARTIAL INVALIDITY.

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

10.8 COMPLIANCE WITH LAWS AND REGULATIONS.

The Contractor, at its expense, shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work as required by Ohio Revised Code.

10.9 EQUAL OPPORTUNITY.

The Contractor shall not and it shall ensure that its Subcontractors, regardless of tier, shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. The Contractor shall and shall ensure that its Subcontractors, regardless of tier, shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, or national origin.

10.10 PERFORMANCE BOND.

The Contractor shall furnish and maintain such bonds as are required by Ohio law and the Contract Documents. All such bonds shall be issued by a surety licensed to issue surety bonds in the State of Ohio and the surety shall be rated A- or better by A.M. Best. The surety shall be bound to all of the terms and conditions of this Agreement and shall indemnify the Owner for all costs and expenses incurred by reason of the Contractor's default, including attorneys' and consultants' fees.

10.11 INSURANCE.

The Contractor shall maintain insurance in the following minimum limits and coverage and provide certificates of insurance evidencing such coverage to the Owner.

10.11.1 COMMERCIAL GENERAL LIABILITY:

The Contractor will maintain commercial general liability insurance covering all operations by or on behalf of the contractor on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance will have these minimum limits and coverage:

- A. Minimum limits: \$1,000,000 each occurrence
 \$2,000,000 general aggregate (per project)
 \$2,000,000 products and completed operations aggregate
 \$10,000 medical payments – any one person
- B. Coverages: 1. 1986 or later ISO commercial general liability form (occurrence form)
 2. Products and completed operations coverage maintained for at least 3 years
 3. Blanket contractual liability (included in 1986 ISO form)
 4. Broad form property damage (included in 1986 ISO form)
 5. Severability of interest (included in 1986 ISO form)
 6. Underground explosion and collapse coverage (included in 1993 ISO form)
 7. Personal Injury
 8. Incidental medical malpractice (included in 1986 ISO form)
 9. Specific waiver of subrogation
 10. Joint venture as named insured
 11. Additional Insured Endorsement

10.11.2 AUTOMOBILE LIABILITY:

The contractor will maintain business auto liability covering liability arising out of any auto (including owned, hired, and non-owned autos).

- A. Minimum Limits: \$1,000,000 combined single limit each accident
- B. Coverages: 1. Additional insured or Designated Insured endorsement
 2. Specific waiver of subrogation
 3. Contractual liability

10.11.3 WORKER'S COMPENSATION & EMPLOYER'S LIABILITY: the contractor will maintain workers' compensation and employer's liability insurance.

- A. Minimum Limits: 1. Statutory workers' compensation
 2. Employer's liability:
 - a. \$1,000,000 bodily injury each accident
 - b. \$1,000,000 bodily injury by disease for each employee
 - c. \$1,000,000 bodily injury disease aggregate

10.11.4 UMBRELLA /EXCESS LIABILITY:

The contractor will maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in sections 10.11.1, 10.11.2 and 10.11.3, which is at least as broad as each and every one of the underlying policies. The amounts of insurance required in sections 10.11.1, 10.11.2, 10.11.3 and 10.11.4 may be satisfied by contractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each of sections 10.11.1, 10.11.2 and 10.11.3 when added to the limit specified in this section 10.11.4.

A. Minimum Limits: \$2,000,000 combined single limit and aggregate limit

B. Coverages:

1. Additional insured endorsement
2. Pay on behalf of wording
3. Concurrency of effective dates with primary
4. Blanket contractual liability
5. Punitive damages coverage (where not prohibited by law)
6. Aggregates apply where applicable in primary
7. Care, custody, and control – follow form primary
8. Drop down feature

11. INDEMNIFICATION.

To the maximum extent permitted by law, the Contractor agrees to indemnify and hold harmless the Owner from and against any damages, costs, and expenses, including but not limited to attorney fees, incurred due to any claim or any asserted claim(s) arising as a result of or related to this Agreement and the Project described herein, including any damages, costs and expenses arising out of such claim or claims. The Owner may set off amounts equal to any sums for which it is entitled to be indemnified from the amounts otherwise due the Contractor under the Contract Documents. It is agreed that the cost of the Owner's staff in calculating any expenses under this paragraph shall be at the rate of \$50.00 per hour.

12. WEEKLY JOB MEETINGS.

The Contractor or one of its representatives with authority to bind the Contractor shall attend weekly job meetings (or such other frequency as directed by the Owner's Representative) with the Owner's Representative at a location directed by the Owner's Representative at which safety issues and job matters are discussed as these relate to the Work being performed. The agenda for the weekly meetings shall be prepared by the Contractor, who shall also be responsible for taking minutes and providing copies to the Owner's Representative and any affected subcontractors within three (3) working days of the meeting.

13. PROPERTY TAX AFFIDAVIT.

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

ENTIRE AGREEMENT.

This Agreement, including the Contract Documents, constitutes the entire agreement between the parties with respect to their subject matter and supersedes all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings except to the extent consistent with the terms of this Agreement.

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

OWNER:
The Board of Directors of the
Heath-Newark-Licking Newark Port Authority

CONTRACTOR:

BY: _____

BY: _____

ITS: _____

ITS: _____



STEC-CC
Rev. 3/15/04

Sales and Use Tax Construction Contract Exemption Certificate

Identification of Contract:

Contractee's (Owner's) name: Heath-Newark-Licking County Port Authority
Exact location of job/project: 851 Irving-wick Drive West, Heath, Ohio 43056
Name of job/project as it appears on contract documentation: "2023 SOUTH CAMPUS BIKE PATH"

The undersigned hereby certifies that the tangible personal property purchased under this exemption certificate was purchased for incorporation into:

☒	real property under a construction contract with the United States government, its agencies, the State of Ohio, or an Ohio political subdivision;	☒	real property which is owned, or will be accepted for ownership at the time of completion, by the United States government, its agencies, the State of Ohio, or an Ohio political subdivision;
☐	a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;	☐	a house of public worship or religious education;
☐	a building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes as defined in section 5739.02(B)(12) of the Revised Code;	☐	a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes;
☐	the original construction of a sports facility under section 307.696 of the Revised Code;	☐	a hospital facility entitled to exemption under section 140.08 of the Revised Code;
☐	real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state		

The original of this certificate must be signed by the owner/contractee and/or government official and must be retained by the prime contractor. Copies must be maintained by the owner/contractee and all subcontractors. When copies are issued to suppliers when purchasing materials, each copy must be signed by the contractor or subcontractor making the purchase.

Prime Contractor

Name: _____
Signed by: _____
Title: _____
Street address: _____
City, state, ZIP code: _____
Date: _____

Subcontractor

Name: _____
Signed by: _____
Title: _____
Street address: _____
City, state, ZIP code: _____
Date: _____

Owner/Contractee

Name: Heath-Newark-Licking County Port Authority
Signed by: _____
Title: Director, Facilities & Operations
Street address: 851 Irving-Wick Drive West
City, state, ZIP code: Heath, OH 43056
Date: _____

Political Subdivision

Name: Heath-Newark-Licking County Port Authority
Signed by: _____
Title: Director, Finance & Compliance
Street address: 851 Irving-Wick Drive West
City, state, ZIP code: Heath, OH 43056
Date: _____