

**ADDENDUM TO THE  
CITY OF AKRON  
AKRON ENGINEERING BUREAU  
CONSTRUCTION AND MATERIAL SPECIFICATIONS  
2008 EDITION**

**ITEM 103 AWARD AND EXECUTION OF CONTRACT**

The following paragraphs replace and supplement CMS General Provisions 103.02 and 103.09 and adds new Provision 103.16 (Bid Award Protest).

**103.02 Award of Contract.** The award of contract, if it be awarded, will be made as soon as it is reasonably possible after the opening of proposals to the lowest and best responsible bidder whose proposal complies with all the requirements prescribed. The Director of Public Service may, but is not required to, determine that an investigation is necessary to determine the responsibility of a bidder. In no case will 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. The successful bidder will be notified, by letter mailed to the address shown on the proposal, that his bid has been accepted and that he has been awarded the contract.

Where the bids exceed the Engineer's Estimate by more than 15 percent, a public hearing may be necessary, in which case the award of the contract, if it be awarded, will not be until after such a hearing.

If a contract is not awarded within 90 calendar days after the opening of bids, the Bidder may withdraw his bid without prejudice.

Where bids are taken in the form of separate proposals on portions of one project, the Work will ordinarily be awarded to the Contractor, otherwise qualified, whose combined bid is the lowest. No Contractor bidding on all such proposals shall be required to enter into a contract covering less than the entire project without his consent.

**103.09 Contractor's Insurance.** Contractor shall purchase and maintain at its own expense, or cause to be purchased and maintained, throughout the term of the contract documents, the insurance specified below. All insurance required hereunder shall apply to and cover loss or liability caused by, arising from, or resulting from the Work performed or required to be performed, provided or required to be provided, hereunder, it being understood and agreed that the Work may include hazardous and ultra-hazardous activities.

**103.10 Liability Insurance.** Limits by line of coverage of not less than the following amounts:

Limits By Line of Coverage	Aggregate Contract Amount \$0 - \$250,000	Aggregate Contract Amount \$250,001- \$500,000	Aggregate Contract Amount \$500,001- \$1,000,000	Aggregate Contract Amount \$1,000,001- \$5,000,000	Aggregate Contract Amount >\$5,000,001
<b>GENERAL LIABILITY</b>					
Bodily Injury & Property Damage Limit each occurrence	\$2,000,000	\$4,000,000	\$8,000,000	\$15,000,000	\$25,000,000

Limits By Line of Coverage	Aggregate Contract Amount \$0 - \$250,000	Aggregate Contract Amount \$250,001-\$500,000	Aggregate Contract Amount \$500,001-\$1,000,000	Aggregate Contract Amount \$1,000,001-\$5,000,000	Aggregate Contract Amount >\$5,000,001
Products/Completed Operations Annual Aggregate	\$2,000,000	\$4,000,000	\$8,000,000	\$15,000,000	\$25,000,000
Personal & Advertising Injury	\$2,000,000	\$4,000,000	\$8,000,000	\$15,000,000	\$25,000,000
General Annual Aggregate	\$2,000,000	\$4,000,000	\$8,000,000	\$15,000,000	\$25,000,000
<b>AUTO LIABILITY</b>					
Annual Combined Single Limit – Bodily Injury, Property Damage	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
<b>WORKERS' COMPENSATION</b>					
<b>PART ONE – WORKERS' COMPENSATION</b>	Ohio Statutory	Ohio Statutory	Ohio Statutory	Ohio Statutory	Ohio Statutory
<b>PART TWO - EMPLOYERS LIABILITY</b>					
Bodily injury by accident, each accident	\$2,000,000	\$2,000,000	\$5,000,000	\$5,000,000	\$5,000,000
Bodily injury by disease, each employee	\$2,000,000	\$2,000,000	\$5,000,000	\$5,000,000	\$5,000,000
Bodily injury by disease, policy aggregate minimum coverage	\$2,000,000	\$2,000,000	\$5,000,000	\$5,000,000	\$5,000,000
<b>CONTRACTORS POLLUTION LIABILITY</b>					
Bodily Injury & Property Damage, Third-Party Claims, each occurrence	\$1,000,000	\$2,000,000	\$4,000,000	\$10,000,000	\$25,000,000
Bodily Injury & Property Damage, Third-Party Claims, annual aggregate	\$1,000,000	\$2,000,000	\$4,000,000	\$10,000,000	\$25,000,000
Clean-up, Response, & Remediation On-Site, each occurrence	\$1,000,000	\$2,000,000	\$4,000,000	\$10,000,000	\$25,000,000
Clean-up, Response, & Remediation Off-Site, each occurrence	\$1,000,000	\$2,000,000	\$4,000,000	\$10,000,000	\$25,000,000
<b>PROFESSIONAL LIABILITY</b>					
Per Claim	\$1,000,000	\$2,000,000	\$5,000,000	\$5,000,000	\$10,000,000
Annual Aggregate	\$1,000,000	\$2,000,000	\$5,000,000	\$5,000,000	\$10,000,000

Commercial General Liability Insurance: On an occurrence coverage basis (including without limitation, bodily injury, personal injury and advertising injury, property damage, broad-form property damage, and broad-form contractual liability arising from or relating to the contract documents, coverage as respects independent contractors, operating mobile equipment, products and completed operations,

explosion, blasting, collapse and underground hazards) of not less than the limits in the chart above. Commercial General Liability, and any Umbrella/Excess liability limits (including Products/Completed Operations coverage) shall apply on a per-project basis. The Commercial General Liability insurance limit, the Auto Liability Insurance limit and the Employers Liability limit requirements may be satisfied by the purchase and maintenance of any combination of primary, excess and/or umbrella insurance.

**Auto Liability Insurance:** Owned, Non-owned and Hired Automobile Liability coverage minimum annual combined single limit, bodily injury and property damage not less than the limits in the chart above. Such insurance shall cover and include liability arising from all vehicles owned by, hired by, or used by or on behalf of Contractor. The coverage must be endorsed with ISO Form CA 99 48, or a substitute form providing equivalent coverage, to include without limitation, coverage respecting liability arising out of the transporting, loading or unloading of Hazardous Materials/Regulated Substances.

**Workers' Compensation/Employers Liability:** Workers' Compensation with Ohio statutory limits and Employers Liability with annual limits of not less than the limits in the chart above. The Employers Liability insurance requirement may be satisfied by including such coverage within the Commercial General Liability policy.

**Contractors Pollution Liability:** If the Work includes activities that could result in or give rise to a contamination or pollution incident, then Contractor shall purchase and maintain in force, or cause to be purchased and maintained in force, insurance covering loss and liability arising out of or relating to Work. Such insurance shall cover and include claims alleging bodily injury, property damage, or clean-up which shall include investigation, response, removal, remediation and neutralization of the pollution condition for both on and off site claims or at any other location to which Hazardous Materials/Regulated Substances were transported from the project site with limits not less than the limits in the chart above. Contractor's Pollution Liability insurance may be written on a claims-made basis provided such policy shall either (i) be renewed annually for a period of not fewer than ten years following the contract completion date with substantially the same terms and conditions or (ii) include an extended reporting period endorsement or clause providing not less than ten years within which a claim may be made under the policy respecting performance of Work or Work by Contractor; the cost for such ten year period shall be borne exclusively by Contractor; provided further that if such insurance is written on a claims-made basis then the per occurrence limits stated above shall apply per incident; limits of liability shall apply on a per-project basis, if commercially feasible.

**Professional Liability Insurance:** If services or the Work performed or provided includes activities that could result in or give rise to a professional liability claim or loss, then Contractor shall purchase and maintain in force, or cause to be purchased and maintained in force, Professional Liability insurance covering liability and damages arising out of or resulting from professional services rendered, or which should have been rendered, pursuant to the contract documents, with limits of liability of not less than the limits in the chart above; any contractual liability exclusion shall contain an exception for matters and/or claims with respect to which Contractor would have liability in the absence of contract or the contract documents because of the Contractor's (or Contractor's subcontractor's) negligent act, error or omission in the performance of Work. Professional Liability insurance may be written on a claims-made basis provided such policy shall either (i) be renewed annually for a period of not fewer than ten years following the contract completion date with substantially the same terms and conditions or (ii) include an extended reporting period endorsement or clause providing not less than ten years within which a claim may be made under the policy respecting the performance of services or Work; the cost of coverage for such ten year period shall be borne exclusively by Contractor; and if commercially feasible, limits of liability shall apply on a per-project basis with a designated limit applying to the project site.

**Riggers Liability:** If Work performed or provided includes activities that could include the use or operation of a crane or any other device or piece of equipment by which materials or equipment, or the movement of property, are rigged, hoisted, lowered, elevated, raised, loaded or unloaded, then Contractor shall purchase and maintain in force, or cause to be purchased and maintained in force insurance covering damage or loss to such property or equipment, with a limit of liability of not less than the purchase price of the most expensive device or piece of equipment that may be rigged, hoisted,

lowered, elevated, raised, loaded or unloaded; such coverage shall include a limit for liability arising from any consequential or indirect losses including without limitation, any delay or loss of use claim.

Railroad Protective Liability: Railroad Protective Liability covering liability and damages arising out of or resulting from Contractor's or its subcontractor's Work rendered, or which should have been rendered, pursuant to this contract naming City as a named insured and having combined single limits of not less than Two Million Dollars (\$2,000,000) for each occurrence and Six Million Dollars (\$6,000,000) in the aggregate applying separately for each annual period for (a) all damages arising out of bodily injuries to or death of one or more persons and (b) all damages arising out of injury to or destruction of property. Such policy shall be written using ISO Form Number CG 00 35 01 07 98 and Pollution Exclusion Amendment Form CG 28 31 07 98, or other form(s) providing equivalent coverage.

**103.11 Property Insurance.** The City shall purchase and maintain (or cause to be purchased and maintained) Property insurance with respect to materials, equipment, buildings, and buildings in the course of construction related to the project, and written on a builder's risk "all-risk" or equivalent policy form in the amount determined by City in its sole discretion. The City may, at the City's option, purchase and maintain such insurance as will insure the City against loss of use of the City's property due to fire or other hazards, however caused. This Property insurance purchased by the City shall cover portions of the Work stored off the project site, and also portions of the Work in transit.

The City shall not be responsible for insuring any construction machinery, equipment, special equipment, FALSEWORK, SCAFFOLDING, MATERIALS, MOBILE EQUIPMENT, VALUABLE PAPERS, TRAILERS AND TOOLS USED OR OWNED BY Contractor in the performance of the Work. Contractor shall purchase and maintain Property insurance for any such property. Such insurance shall be written on an "all-risk" or equivalent policy form in the amount determined by Contractor at its sole discretion. The City shall in no circumstance be responsible or liable for the loss or damage to, or disappearance of, any property used or owned by Contractor in the performance of the Work.

If any party the City engages relative to the project causes, in whole or in part, a loss covered under the Property insurance carried and maintained by the City pursuant to the contract documents, then the party that the City engages relative to the project for which that party is legally liable, shall, upon demand of the City, promptly pay that proportion of the City's Property insurance policy deductible or retention equal to that percentage share of the loss caused by such party as determined in the City's sole, reasonable discretion; the foregoing shall apply to any entity or person for which the party is legally liable. No party shall be entitled to any set-off or other adjustment in fees charged to the City by any party under the contract documents by reason of such deductible or retention payment. Such Property insurance carried and maintained by the City (or cause to be purchased and maintained) shall have a per loss deductible or retention as decided by the City in its sole discretion.

The City shall have the power to adjust and settle a Property loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the City's exercise of this power. If such objection is made, the dispute shall be resolved as provided in the contract documents. The City shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

A loss insured under the City's Property insurance shall be adjusted by the City and made payable to the City for prompt payment to the payee(s) under the Property insurance, as their interests may appear.

The City shall distribute any Property insurance proceeds in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration or judicial award.

**103.12 Subcontractors Insurance.** Contractor shall not subcontract any part of the contract documents without assuming responsibility for, and requiring, each subcontractor (and each sub-subcontractor at every tier) to purchase and maintain the same types of insurance with substantially the

same terms, conditions, additional insured statuses, and limits of liability as required herein of Contractor or as specified herein for subcontractor; the required limits of liability for each subcontractor (and each sub-subcontractor at every tier) shall be those as specified in the Liability Insurance Chart in Paragraph 1.02.A of this specification depending on the subcontractor or sub-subcontractor's aggregate contract amount with Contractor. Contractor's (or any subcontractor's or sub-subcontractor's) failure to maintain insurance for a minimum of ten years after completion of the Work as required by the contract documents shall be deemed a material breach of the contract documents, as determined by the City in its sole discretion.

**103.13 General Requirements.** Upon Contractor's knowledge of any occurrence, event, or claim relating to or arising from the Work or services provided by Contractor pursuant to the contract documents that may reasonably be expected by Contractor to exceed \$100,000; or upon Contractor's knowledge of any occurrence, event, or claim relating to or arising from, or not relating to or arising from, the Work or services provided by Contractor pursuant to the contract documents which may reduce or materially affect the aggregate amount of insurance coverage available to the City pursuant to the contract documents; or upon Contractor's knowledge of any occurrence, event, or claim not relating to or arising from the Work or services provided by Contractor pursuant to the contract documents that may reasonably be expected by Contractor to exceed \$750,000; then Contractor shall (i) immediately provide City with written notice of such occurrence, event or claim(s) with reasonable detail, and (ii) promptly obtain replacement insurance for the eroded aggregate limit and provide the City with evidence thereof.

Contractor shall submit to the City within ten calendar days after signing the contract documents, and not more than 30 days prior to commencement of the services and Work, certificates evidencing the effectiveness of the insurance policies required herein. Contractor shall, within 30 days of the City's request during the term of the contract documents, provide the City with a complete copy of all insurance policies purchased and maintained by Contractor pursuant to the contract documents. Annually for a period of ten years following the contract completion date, Contractor, upon written request from the City, shall promptly provide the City with certificates of insurance evidencing the effectiveness of the insurance coverages required pursuant to the contract documents, and if requested by the City, a complete copy of all insurance policies then in effect pursuant to the contract documents.

Contractor shall be responsible for the payment of any and all deductible(s) or retention(s) under the policy or policies of insurance purchased and maintained by Contractor pursuant to the contract documents.

The City and its officers, administrators, employees, representatives, agents, and Contractors shall be named as additional insureds on Contractor's Commercial General Liability policy and Automobile policy. The extent of the additional insured coverage shall be no less broad than that provided under ISO Form CG 20 26 11/85 for General Liability (or a substitute form providing equivalent coverage) and ISO Form CA 20 48 02/99 for Auto Liability. The additional insured coverage afforded under Contractor's policies shall include both ongoing operations (work in progress) and completed operations (completed work). Additional insured coverage as required herein shall be maintained for a minimum of ten years after the contract completion date. Any Umbrella or Excess insurance used to satisfy the insurance requirements of the contract documents shall follow form of, and provide substantially same coverage as, any underlying policies, including specifically, insured or additional insured status of the City thereunder.

The insurance coverage required to be purchased and maintained by Contractor by the contract documents shall be primary to any insurance, self-insurance, or self-funding arrangement maintained by the City which shall not contribute therewith, and there shall be severability of interests under the insurance policies required by the contract documents for all coverages provided under said insurance policies and otherwise provide cross liability coverage.

All insurance required to be purchased and maintained by Contractor pursuant to the contract documents shall be placed and maintained with insurance companies rated, currently at least equal to the AM Best's Rating of A, financial size of X, licensed to do business in Ohio; and where commercially

feasible, admitted to do business in Ohio. The City's review, receipt, and/or acceptance of any insurance policy purchased and maintained by Contractor, or a certificate of insurance evidencing such insurance, shall not constitute the City's approval of such insurance or the City's agreement that such insurance satisfies the insurance requirements set forth in the contract documents.

The types and limits of insurance to be purchased and maintained by Contractor and any subcontractor pursuant to the contract documents shall not be deemed to constitute a limitation of Contractor's liability or indemnification obligations hereunder.

If Contractor or any subcontractor fails to purchase and maintain, or fails to continue in force throughout the term of the contract documents and until ten years after the contract completion date, unless otherwise specified herein, insurance in the types and with limits of liability required by the contract documents, the City may purchase such insurance and the cost thereof shall be borne by Contractor.

**103.14 Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, the City and Contractor, on behalf of themselves and their elected and appointed officials, board members, officers, administrators, employees, representatives, agents, subcontractors, and consultants, hereby expressly waive all rights of recovery against each other, and their insurer's(s') rights of subrogation, for damages caused by fire or other causes of loss to the extent covered by Property insurance obtained or required to be obtained (whichever is broader) pursuant to the contract documents, except such rights as they have to proceeds of such insurance held by Contractor for prompt payment to the payee(s) under the Property insurance. Contractor and all parties Contractor engages relative to the Project shall require of its/their respective subcontractors and any sub-subcontractors, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers by endorsement or otherwise. A waiver of right of recovery or subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Such waiver shall not apply to any deductibles, self-insurance, or self-insured retention of the property insurance purchased and maintained by the City. Contractor on behalf of itself and its elected and appointed officials, board members, officers, administrators, employees, representatives, agents, subcontractors, and consultants, hereby expressly waives all rights of recovery against the City, and its insurer's(s') rights of subrogation, for damages, loss, cost, expense, injury, or liability incurred or caused by, resulting from, or arising out of any occurrence or peril to the extent covered by any liability insurance required of Contractor hereunder.

**103.15 Third Party Over.** In any and all claims against City, the indemnification obligations of Contractor in the contract documents shall not be limited in any way by any limitation on the amount or type of damage compensation or benefits payable by or for Contractor under Workers' Compensation Acts, disability benefits or other employee benefit acts. As between City and Contractor, Contractors waive its immunities under Ohio Revised Code Chapter 4123, Article 2; Section 35 of the Ohio Constitution or any similar workers' compensation statutory immunity for purposes of conforming the indemnity obligations of the contract documents.

**103.16 Bid Award Protest.** Any actual or prospective bidder/contractor who is allegedly aggrieved in connection with the solicitation or award of a contract may protest. The protest will be submitted in writing to the Director of Public Service, within seven days after such aggrieved person knows or should have known of the facts giving rise thereto. If the protest is not resolved by mutual agreement, the Director of Public Service may issue a decision in writing to the protestant. If the Director of Public Service has not issued a decision within ten days of receipt of the appeal, it will be deemed denied. If the protestant wishes to appeal the decision rendered by the Director of Public Service, such appeal must be made to the City of Akron Board of Control, through the Director of Public Service within seven days of that decision. The decision of the Board will be final. The Board need not consider protests unless this procedure is followed. Nothing in this paragraph however will prevent the City from awarding a contract at any time, if the Director of Public Service Determines it is in the best interest of the City.

END OF SECTION