

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

**113 ESCROW BID DOCUMENTS**

**The following section is a supplement to CMS General Provisions Section 100.**

**113.01 Definitions.**

**Escrow Bid Documents.** Escrow documents include all of the quantity take-offs, calculations, quotes, notes, reports, and other information committed to hard copy or electronic media that a bidder used to determine the bid price: collectively the 'Escrow Bid Documents'.

**113.02 Scope.** The three low bidders shall submit additional financial information, including the Escrow Bid Documents, within five (5) working days after the receipt of bids. The documents shall include one (1) copy of all documentary information generated in preparation of bid prices for this project, as described in Paragraph 1.05, "Format and Contents" of this specification. The Escrow Bid Documents of the successful bidder will be held in escrow for the duration of the contract.

The successful bidder agrees, as a condition of award of the contract, that the Escrow Bid Documents constitute all the information used in the preparation of its bid, and that no other bid preparation information will be considered in resolving disputes or claims. The successful bidder also agrees that nothing in the Escrow Bid Documents will change or modify the terms or conditions of the contract documents.

**113.03 Ownership.** The Escrow Bid Documents are, and will always remain, the property of the Bidder or Contractor, subject to joint review by the Engineer and the Bidder or Contractor, as provided herein.

The City stipulates and expressly acknowledges that the Escrow Bid Documents, as defined herein, are intended to constitute proprietary information. This acknowledgement is based on the City's express understanding that the information contained in the Escrow Bid Documents is not known outside bidder's business, is known only to a limited extent and only by a limited number of employees of the bidder, is safeguarded while in bidder's possession, is extremely valuable to bidder and could be extremely valuable to bidder's competitors by virtue of it reflecting bidder's contemplated techniques of construction. The City further acknowledges that bidder expended substantial sums of money in developing the information included in the Escrow Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The City further acknowledges that the Escrow Bid Documents and the information contained therein are made available to City only because such action is an express prerequisite to award of the contract. The City further acknowledges that the Escrow Bid Documents include a compilation of information used in bidder's business, intended to give bidder an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation. The City further agrees to safeguard the Escrow Bid Documents, and all information contained therein, against disclosure to the fullest extent permitted by law.

The Escrow Bid Documents are intended to constitute a proprietary and confidential business matter and neither its submission, nor retention by the City, nor its potential subsequent use in accordance with the terms of the contract constitute any waiver of this proprietary material so as to make the information subject to disclosures under the Ohio Public Records Law, Chapter 143 of the Ohio Revised Code unless otherwise provided by that law.

**113.04 Purpose.** Escrow Bid Documents will be used to assist in the negotiation of price adjustments, supplemental agreements, and contract modifications and in the settlement of disputes and claims. They will not be used for pre-award evaluation of the bidder's anticipated methods of construction or to assess the bidder's qualifications for performing the Work.

**113.05 Format and Contents.** Bidders may submit Escrow Bid Documents in their usual cost-estimating format; a standard format is not required. It is not the intention of this specification to cause the bidder extra work during the preparation of the proposal, but to ensure that the Escrow Bid Documents will be adequate to enable complete understanding and proper interpretation for their intended use. The Escrow Bid Documents shall be submitted in the English language.

It is required that the Escrow Bid Documents clearly itemize the estimated costs of performing the Work of each bid item contained in the bid schedule. Bid items should be separated into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all quantity takeoffs, estimates of crews, and equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the bidder to arrive at the prices contained in the bid proposal. Estimated costs should be broken down into the bidder's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment and indirect costs should be detailed in the bidder's usual format. The bidder's allocation of plant and equipment, indirect costs, contingencies, markup and other items to each bid item shall be included.

All costs shall be identified. For bid items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials and subcontracts, as applicable, are included and provided that indirect costs, contingencies and markup, as applicable, are allocated.

Bid documents provided by the City should not be included in the Escrow Bid Documents unless needed to comply with the requirements herein.

**113.06 Submittal.** The Escrow Bid Documents shall be submitted to the escrow agent by the three low bidders in sealed container(s) within five (5) working days after the time for receipt of bids. The container shall be clearly marked on the outside with the bidder's name, date of submittal, project name, contract number, project number, and the words "Escrow Bid Documents".

Escrow Agent Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Sealed container(s) shall consist of boxes in the following standard sizes: Standard Cube (LL) 15"x12"x10"; Letter Banker 24"x12"x10"; or Legal Banker: 24"x15"x10".

The Escrow Bid Documents shall be accompanied with a certification signed by an individual authorized by the bidder to execute the bidding proposal, stating that the material in the Escrow Bid Documents constitutes all the documentary information used in preparation of the bid and that the bidder has personally examined the contents of the Escrow Bid Documents container and has found that the documents in the container are complete.

The bidder shall obtain the completed Acknowledgement of Delivery certification, appended hereto as Attachment 1, from the escrow agent and shall deliver the acknowledgment and a copy of the Escrow Bid Documentation certification which accompanied the Escrow Bid Documents, to the City within said five (5) day period.

Prior to award, the Escrow Bid Documents of the apparent successful bidder will be examined, organized and inventoried by the Engineer, together with members of the bidder's staff who are knowledgeable in how the bid was prepared.

This examination is to ensure that the Escrow Bid Documents are legible and complete. It will not include review of, and will not constitute acceptance of proposed construction methods, estimating assumptions, or interpretations of contract documents. Examination will not alter any condition or term of the contract.

If all the documentation required in Item 113.05, "Format and Contents", has not been included in the original submittal, additional documentation may be required, at the Engineer's discretion, prior to award of the contract. The detailed breakdown of estimated costs shall be reconciled and revised, if appropriate, by agreement between the bidder and the City before making the award.

If the contract is not awarded to the apparent successful bidder, the Escrow Bid Documents of the bidder next to be considered for award shall be processed as described.

Timely submission of complete Escrow Bid Documents is an essential element of the bidder's responsibility and a prerequisite to a contract award. Failure to provide the Escrow Bid Documents will be sufficient cause for the City to reject the bid.

Escrow Bid Documents submitted by unsuccessful bidders will be returned unopened, unless opened as provided above, following award of the contract. Unsuccessful bidders shall pick up the Escrow Bid Documents from the Escrow Agent within 14 days of written notice.

If any bidder's proposal is based upon subcontracting any part of the Work, each subcontractor whose total subcontract price was proposed by the bidder shall provide separate Escrow Documents to be included with those of the bidder. Such documents shall be opened and examined in the same manner at the same time as the examination described above for the apparent successful bidder.

If the Contractor wishes to subcontract any portion of the Work after award, the City retains the right to require the Contractor to submit Escrow Documents from the subcontractor before the subcontract is accepted.

**113.07 Storage.** The Escrow Bid Documents will be placed in escrow, for the life of the contract, in the facility of the escrow agent. The cost of storage will be borne by the City.

**113.08 Examination.** The Escrow Bid Documents will be examined by both the Engineer and the Contractor, at any time deemed necessary by the Service Director, unless the Contractor waives the right to be present by failing to appear at the designated time and place. Examination of the Escrow Bid Documents is subject to the following conditions:

- (a) As trade secrets, the Escrow Bid Documents are intended to constitute proprietary and confidential material as described in Paragraph 1.03.
- (b) The City and the Contractor shall each designate, in writing to the other party and within ten days after execution of the contract, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents.
- (c) Access to the Escrow Bid Documents may take place only in the presence of duly designated representatives of both the City and the Contractor, unless the Contractor waives its right to be present by failing to appear at the designated date and time at which the Escrow Bid Documents will be examined.

**113.09 Final Disposition.** The Escrow Bid Documents will be returned to the Contractor at such time as the contract has been completed, all claims have been resolved, and final payment has been accepted by the Contractor. The Contractor shall pick up the Escrow Bid Documents from the Escrow Agent within 14 days of written notice.

## ESCROW AGREEMENT

This Agreement made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between \_\_\_\_\_ the City of Akron (the "City"), \_\_\_\_\_ as Escrow Agent ("Escrow Agent") and \_\_\_\_\_ (the "Bidder"), Witnesseth that:

WHEREAS the City is a public entity in the State of Ohio which is presently engaged in a competitive bidding process to award a construction contract to the lowest and best Bidder for a construction project entitled \_\_\_\_\_ ; and

WHEREAS the Bidder has submitted a Bid on this Contract and is one of the apparent three low Bidders for this Contract; and

WHEREAS the Contract Documents require the apparent three low Bidders to submit, within five working days (excluding Saturdays, Sundays and holidays), one copy of all documentary information generated in preparation of Bid prices for this project, as described in the Contract Documents, hereinafter referred to as "Escrow Bid Documents," to the Escrow Agent together with a certification as required in the Contract Documents; and

WHEREAS, the Escrow Agent, for stated consideration, is willing to assume the obligations of Escrow Agent as agreed herein;

NOW THEREFORE, for consideration mutually acknowledged, the City and the Bidder hereby agree as follows:

1. The Bidder shall comply with the provisions of the Contract Documents by delivering a copy of the Escrow Bid Documents to the Escrow Agent within the required time limits together with the required Certification. The Bidder shall receive from the Escrow Agent an Acknowledgement of Delivery of Bid Documentation in the form attached hereto as Attachment 1, at the time the Bidder delivers the Escrow Bid Documents to the Escrow Agent. The Bidder shall deliver the original Escrow Agent Acknowledgement and a copy of the Escrow Bid Document certification to the City within the required time limits.
2. The City will comply with the provisions of the Contract Documents regarding use of the Escrow Bid Documents and will safeguard the Escrow Bid Documents and all information contained therein against disclosure to the fullest extent permitted by law.
3. The Escrow Agent is hereby expressly authorized to receive, store, safeguard, release and return the Escrow Bid Documents during the life of the applicable Contract as directed in writing by the City and the Bidder.
4. The Escrow Agent is hereby expressly authorized to release the Escrow Bid Documents to the Bidder if the Bidder is unsuccessful and not awarded the Contract with the City. Otherwise, the Escrow Agent is expressly authorized to only release the Escrow Bid Documents under the following circumstances:
  - a. For joint examination by the City (or its representative) and the Bidder (or by the City alone if the Bidder fails to appear at the designated place and time at which the Escrow Bid Documents were scheduled to be examined); or
  - b. For return to the Bidder at such time as the contract has been completed and final payment has been made; or

- c. Under such circumstances as is provided for in the contract documents, or as mutually agreed by the City and the Bidder which direction shall be delivered in writing by the City, signed by both parties, to the Escrow Agent.
5. The City and the Bidder further acknowledge and agree as follows:
  - a. That the Escrow Agent:
    - i. will not be responsible for any of the agreements referred to herein but will be obligated only for the performance of such duties as are specifically set forth in the Escrow Agreement,
    - ii. will not be obligated to take any legal or other action hereunder which might in its judgment involve any expense or liability unless it will have been furnished with acceptable indemnification,
    - iii. may rely on and will be protected in acting or refraining from acting upon any written notice, instruction, instrument, statement, request or document furnished to it hereunder and believed by it to be genuine and to have signed or presented by the proper person, and will have no responsibility for determining the accuracy thereof; and
    - iv. may consult counsel satisfactory to it, including house counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel.
  - b. Neither the Escrow Agent nor any of its directors, officers or employees will be liable to anyone for any action taken or omitted to be taken by it or any of its directors, officers or employees hereunder except in the case of gross negligence or willful misconduct to the fullest extent permitted by law. In no event will the Escrow Agent be liable for indirect, special or consequential damages.
  - c. In the event the Escrow Agent's obligations would involve the handling of Escrow Funds, which is not presently contemplated, the City and the Bidder, to the extent permitted by law, agree to assume any and all obligations imposed now or hereafter by any applicable tax law with respect to the payment of Escrow Funds under this Agreement. The City and the Bidder undertake to instruct the Escrow Agent in writing with respect to the Escrow Agent's responsibility for withholding and other taxes, assessments or other governmental charges, certifications and governmental reporting in connection with its acting as Escrow Agent under this Agreement.
  - d. The Escrow Agent shall have no more or less responsibility or liability on account of any action or omission of any book-entry depository or sub-escrow agent employed by the Escrow Agent than any such book-entry depository or sub-escrow agent has to the Escrow Agent, except to the extent that such action or omission of any book-entry depository or sub-escrow agent was caused by the Escrow Agent's own negligence or bad faith.
  - e. That the City pay the Escrow Agent's reasonable compensation for its normal services hereunder. The Escrow Agent shall be entitled to reimbursement on demand for all reasonable expenses incurred in connection with the administration of the escrow created hereby which are in excess of its compensation for normal services that are incurred in connection with resolution of any claim by any party hereunder.

- f. The Escrow Agent may at any time resign as Escrow Agent hereunder by giving thirty days prior written notice of resignation to the City and the Bidder. Prior to the effective date of the resignation as specified in such notice, the City will issue to the Escrow Agent a written instruction authorizing redelivery of the Escrow Bid Documents and any Escrow Funds to a bank or trust company that it selects subject to the reasonable consent of the Bidder. Such bank or trust company shall have capital, surplus and undivided profits in excess of \$50,000,000. If, however, the City fails to name such a successor escrow agent within twenty days after the notice of resignation from the Escrow Agent, the Bidder shall be entitled to name such escrow agent. If no successor escrow agent is named by the City or the Bidder, the Escrow Agent may apply to a court of competent jurisdiction for appointment of a successor escrow agent. The provisions of paragraph 5 b and c shall survive the termination of this Agreement.
6. Dispute Resolution: It is understood and agreed that should any dispute arise with respect to the delivery, ownership, right of possession, and/or disposition of the Escrow Bid Documents and/or any Escrow Funds, or should any claim be made upon such Fund by a third party, the Escrow Agent, upon receipt of written notice of such dispute or claim by the parties hereto or by a third party, is authorized and directed to retain in its possession without liability to anyone, all or any of said Escrow Bid Documents and/or Fund until such dispute shall have been settled either by the mutual agreement of the parties involved or by a final order, decree or judgment of a Court in the United States of America, the time for perfection of any appeal of such order, decree or judgment having expired. The Escrow Agent may, but shall be under no duty whatsoever to, institute or defend any legal proceedings that relate to the Escrow Bid Documents and/or any Escrow Fund.
7. Consent to Jurisdiction and Service: The City, Bidder, and the Escrow agent thereby absolutely and irrevocably consent and submit to the jurisdiction of the courts of the State of Ohio in connection with any actions or proceedings brought against the City and the Bidder by the Escrow Agent arising out of or relating to this Escrow Agreement.
8. Force Majeure: Neither the City nor the Bidder nor Escrow Agent shall be responsible for delays or failure in performance related to Escrow Bid Documents resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters.
9. Notices: Any notice permitted or required hereunder shall be deemed to have been duly given if delivered personally or if mailed certified or registered mail, postage prepaid, to the parties at their addresses set forth below or to such other address as they may hereafter designate.

If to the City:

Name: City of Akron

Address: 166 S. High Street  
Room 200  
Akron, Ohio 44308

Attn: Mayor

If to the Bidder:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

If to the Escrow Agent:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

With copies to:

Address: 166 S. High Street  
Room 201  
Akron, Ohio 44308

Attn: Director of Public Service

and

Address: 161 South High Street,  
Suite 202,  
Akron, Ohio 44308

Attn: Director of Law

- 10. Binding Effect: This Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors and assigns.
- 11. Modifications/Termination: This Agreement may not be altered, modified or terminated without the express written consent of the parties hereto. No course of conduct shall constitute a waiver of any of the terms and conditions of this Escrow Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Escrow Agreement on one occasion shall not constitute a waiver of the other terms of this Agreement, or of such terms and conditions on any other occasion.
- 12. Governing Law: This Escrow Agreement shall be governed by and construed under the laws of the State of Ohio.
- 13. Equal Opportunity: The Escrow Agent agrees to abide by the applicable provisions of Section 34.03 of the Code of Ordinances of the City of Akron in performance of its duties under this Agreement.



\_\_\_\_\_  
ESCROW AGENT

By:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Typed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
City of Akron

By:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Typed Name*

\_\_\_\_\_  
Director of Public Service

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
CONTRACTOR

By:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Typed Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

Attested By:

\_\_\_\_\_  
*Secretary*

AFFIX SEAL

**ATTACHMENT 1 – ACKNOWLEDGMENT OF DELIVERY OF BID DOCUMENTATION**

**CITY OF AKRON  
SUMMIT COUNTY, OHIO**

Project Name: \_\_\_\_\_

Bid Date: \_\_\_\_\_

\_\_\_\_\_, ESCROW AGENT, AS IDENTIFIED BY THE CITY OF AKRON

HEREBY CERTIFIES THAT \_\_\_\_\_  
(Name of Contractor)

AS IDENTIFIED BY \_\_\_\_\_  
(Representative of Contractor)

HAS DELIVERED TO ESCROW AGENT'S OFFICE FOR STORAGE, A SEALED CONTAINER WHICH  
BIDDER REPRESENTS TO BE ALL DOCUMENTATION USED IN THE PREPARATION OF BIDDER'S  
BID, OTHERWISE KNOWN AS THE "ESCROW BID DOCUMENTS" AS BIDDER REPRESENTS IT IS  
REQUIRED TO DO IN ACCORDANCE WITH THE CONTRACT DOCUMENTS OF THE ABOVE  
REFERENCED CONTRACT, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2013.

\_\_\_\_\_  
(Name of Escrow Agent)

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTESTED BY: \_\_\_\_\_