REQUEST FOR BIDS

New Maintenance Building Roof

RECEIPT OF BIDS
Separate sealed proposals for the above project will be received by the Barry County Road Commission, at 1725 West M-43 Highway, P.O. Box 158, Hastings, Michigan 49058, until 10:30 a.m. on July 16, 2019 at which time the bids will be publicly opened and read aloud.

BID INFORMATION
Engineering Department
(269) 945-3449 or (888) 575-8059

SCOPE OF PROJECT
The project consists removing vents, Install Flashing & installing new roof.

SUBMITTAL REQUIREMENTS
Bid Form (with authorized signature)
Proposed Material Product Information
Financial Disclosure

RIGHT TO REJECT
In its sole discretion, the Barry County Road Commission reserves the right to waive any irregularities in any bids, to reject any or all bids, and to accept bids other than the lowest responsible bid. No bid may be withdrawn after the schedule closing time for receiving bids and for a period of 90 days thereafter.

ENCLOSURES
Request for Bids
Instructions to Bidders
Bid Form
Bid Specifications
Building Sketch
Standard Form of Agreement between Barry County Road Commission and Contractor

Retainage requirements applicable to Public Agency constructions contract (Act 524 of the Public Acts of Michigan of 1980, as amended), for bids over $30,000.

Financial Disclosure
BID FORM

New Roof

This Bid is submitted to: Barry County Road Commission
1725 West M-43 Highway.
P.O. Box 158
Hastings, Michigan 49058

By submitting this Bid, the Bidder represents and agrees that:

1. Bidder accepts all of the terms and conditions set forth in the Request for Bids, the Instructions to Bidders, and Specifications.

2. If this Bid is accepted, Bidder will enter into the Standard form of Agreement with the Barry County Road Commission in the form (and containing the terms) included in the Bidding Documents and to perform all of the work specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid, and in accordance with the other terms and conditions of the Bidding Documents.

3. This Bid will remain subject to acceptance for ninety (90) days after the bid opening, or for such longer period of time that Bidder may agree to in writing upon request of the Barry County Road Commission.

4. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity. Bidder has not directly or indirectly induced or solicited any other bidder to submit a false or sham bid. Bidder has not solicited or induced any individual or entity to refrain from bidding. Bidder has not sought by collusion to obtain for itself any advantage over any other bidder or over the Barry County Road Commission.

5. Bidder will complete the work in accordance with the Bidding Documents for the following price:

   Material Cost: $____________________

   Labor Costs: $____________________

   Lump Sum Total Project Costs: $____________________

6. The required bid security in the form of a bid bond, certified check, cashier's check, or money order in the sum of five percent (5%) of the amount of the bid is attached and made part of this Bid, if the bid is over $25,000.

NOTE: This work must be completed on or before October 31, 2019.
7. The Barry County Road Commission reserves the right to (a) reject this Bid; (b) reject the bid of any Bidder whom it deems to be non-responsible; (c) reject the bid of any Bidder that it believes would not be in the best interest of the project; (d) waive all informalities not involving price, time, or changes in the work; and (e) negotiate contract terms with the successful Bidder. If the contract is to be awarded, the Barry County Road Commission will award the contract to the Bidder whose bid is in the best interest of the Barry County Road Commission, as determined in its sole discretion. The Road Commission also reserves the right to extend this contract into future years at the request of the contractor when deemed by the Board to be in the best interest of the Barry County Road Commission.

8. Bidder must submit product information of materials included in bid price with bid submission.

This Bid Form is signed on ______________________, 20__ by:

If an individual:
Signature: ________________________________
Print Name: ______________________________

Bidder’s Contact Information:
Address: __________________________________
__________________________________________

If a partnership, limited liability company or corporation (if a joint venture, complete for each joint venturer):
Entity Name: ______________________________
Signature: ________________________________
Print Name: ______________________________
Title: ____________________________________

Phone: __________________________________
Fax: _____________________________________
Email: ___________________________________
INSTRUCTIONS TO BIDDER

1. **Project Representative.** The designated representative of the Barry County Road Commission is Bradley S. Lamberg, P.E., Barry County Road Commission, 1725 West M-43 Highway, P.O. Box 158, Hastings, Michigan 49058, Telephone (269) 945-3449.

2. **Bidding Documents.** Complete sets of the Bidding Documents may be obtained from the Barry County Road Commission and must be used in preparing bids. The Barry County Road Commission does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

3. **Qualification of Bidders.** It is the intention of the Barry County Road Commission to award the contract to a Bidder who will perform and complete all the work in a very satisfactory manner. After opening of the bids, if requested by the Barry County Road Commission, Bidders must give (a) information regarding the extent and nature of the Bidder’s experience in work of this kind, (b) a statement of financial status, (c) a list of all jobs the Bidder currently has underway with the volume and percent complete, and (d) references as to the Bidder’s business standing and general ability.

4. **Examination of Bidding Documents, the Site, and other Data.** It is the responsibility of the Bidder to:

   (a) Examine and carefully study the Bidding Documents, including all addenda and the other related data identified in the Bidding Documents;

   (b) Visit the site or sites and become familiar and satisfied with the general, local, and site conditions that may affect cost, progress and performance of the work;

   (c) Become familiar and satisfied with all federal, state, and local laws and regulations that may affect cost, progress or performance of the work;

   (d) Agree at the time of submitting its bid that no further examination, investigation, test, study or data is necessary for the determination of its bid, for performance of the work at the price bid and in accordance with the terms under which the work is to be completed;

   (e) Promptly give the Barry County Road Commission written notice of all conflicts, errors, ambiguities or discrepancies that Bidder discovers in the Bidding Documents, and to confirm that the written resolution thereof by the Barry County Road Commission is acceptable to the Bidder; and

   (f) Determine that the Bidding Documents are generally sufficient to indicate and convey an understanding of all terms and conditions for the performance of the work.

The submission of a Bid Form will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of this paragraph 4.
5. **Interpretations.** All questions about the meaning or intent of the Bidding Documents, or any part thereof, are to be submitted in writing to the Barry County Road Commission. Interpretations or clarifications considered necessary by the Barry County Road Commission to such questions will be issued by addenda mailed or delivered to all parties recorded by the Barry County Road Commission as having received the Bidding Documents. Questions received less than seven (7) days before the bid opening may not be answered. Only questions answered by addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. In addition, addenda may be issued to clarify, correct or change the Bidding Documents as deemed advisable by the Barry County Road Commission.

6. **Performance Bond and Payment Bond.** For a contract over $25,000, a performance bond and a payment bond, each payable to the Barry County Road Commission, and each in an amount of one hundred percent (100%) of the contract price, with a corporate surety approved by the Barry County Road Commission, will be required for the faithful performance of the contract. Attorneys-in-fact who sign payment bonds and performance bonds must file with each bond a certified and effective dated copy of their power of attorney. The payment bond and performance bond must comply with the requirements of Act 213 of the Public Acts of Michigan of 1963, as amended. The successful Bidder shall deliver fully executed performance and payment bonds to the Barry County Road Commission at the time it delivers the executed Standard Form of Agreement between Barry County Road Commission and Contractor.

7. **Contract Times; Liquidated Damages.** The work must be substantially completed within the time or times set forth in the specifications set forth in the Bidding Documents. The Bidder will be responsible for any liquidated damages set forth in the specifications for failure to substantially complete the work within the requisite time.

8. **Subcontractors, Suppliers and Others.** If requested, the apparent successful Bidder, and any other Bidder, shall promptly submit to the Barry County Road Commission a list of all subcontractors and suppliers proposed to be used for each of the principal portions of the work along with an experience statement with pertinent information regarding similar projects and other evidence of qualification for each subcontractor and supplier. If the Barry County Road Commission has reasonable objection to any proposed subcontractor or supplier, it may, before its execution of the Standard Form of Agreement between Barry County Road Commission and Contractor request the apparent successful Bidder to submit a substitute, in which case the apparent successful Bidder shall submit an acceptable substitute without an increase in the bid, unless consented to by the Barry County Road Commission. If the apparent successful Bidder declines to make any such substitution, the Barry County Road Commission may award the contract to a different Bidder that proposes to use acceptable subcontractors and suppliers. Declining to make requested substitutions will not constitute grounds for forfeiture of bid security of any Bidder. Any subcontractor or supplier listed and against which the Barry County Road Commission make no written objection prior to its execution of the Standard Form of Agreement between Barry County Road Commission and Contractor will be deemed acceptable.
9. **Preparation of Bid.** The Bid Form, included with the Bidding Documents, shall be completed and submitted as follows:

   (a) All blanks on the Bid Form shall be completed by printing in ink or by typewriter, and the Bid Form shall be signed by the Bidder.

   (b) A bid by an entity shall be signed by an authorized officer or agent of the entity and accompanied by evidence of the authority to sign. The entity’s address shall be shown below the signature line.

   (c) A bid by an individual shall be signed by the individual and shall show the Bidder’s name and address.

   (d) A bid by a joint venture shall be executed by authorized representatives of each joint venturer and accompanied by evidence of each individual’s authority to sign. The address of each joint venturer shall be shown below the signatures.

   (e) Bidder’s state contractor license number for Michigan, if any, shall be shown on the Bid Form.

10. **Submittal of Bid.** The completed Bid Form and any applicable bid security shall be submitted no later than the date and time prescribed and at the place indicated in the Request for Bid, and shall be enclosed in an opaque sealed envelope plainly marked with the project title and the name and address of the Bidder.

11. **Modification and Withdrawal of Bid.** Prior to the time for opening of bids, a bid may be modified or withdrawn by an appropriate document duly executed in the same manner as a Bid Form and delivered to the place where the Bid Forms are submitted. No Bidder may withdraw a bid within ninety (90) days after the date and time for opening bids.

12. **Opening of Bids.** Bids will be opened at the time and place indicated in the Request for Bids and, unless obviously non-responsive, read aloud publicly.

14. “The BCRC, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of gender, disability, race, color, or national origin in consideration for an award.”

15. **Awarding of Contract.** The Barry County Road Commission reserves the right to (a) reject any or all Bids, including without limitation, nonconforming, non-responsive, unbalanced, or conditional bids; (b) reject the bid of any Bidder whom it deems to be non-responsible; (c) reject the bid of any Bidder that it believes would not be in the best interest of
the project; (d) waive all informalities not involving price, time, or changes in the work; and (e) negotiate contract terms with the successful Bidder. If the contract is to be awarded, the Barry County Road Commission will award the contract to the Bidder whose bid is in the best interest of the Barry County Road Commission, as determined in its sole discretion.

16. **Signing of Agreement.** When the Barry County Road Commission gives a notice of award to the successful Bidder, the notice will be accompanied by the required number of unsigned counterparts of the Standard Form of Agreement between Barry County Road Commission and the Contractor. Within fifteen (15) days of receipt, the successful Bidder shall sign and deliver the required number of counterparts of the Standard Form of Agreement between Barry County Road Commission and the Contractor. Within ten (10) days of its receipt of the signed Standard Form of Agreement between Barry County Road Commission and the Contractor, the Barry County Road Commission will deliver one fully signed counterpart of the Standard Form of Agreement between Barry County Road Commission and the Contractor to the successful Bidder.

17. **Notice to Proceed.** A notice to proceed will be issued within thirty (30) days of the execution of the Standard Form of Agreement between Barry County Road Commission and the Contractor by the Barry County Road Commission. If there are reasons why the notice to proceed cannot be issued within such period, the time may be extended by mutual agreement between the Barry County Road Commission and the successful Bidder. If the notice to proceed has not been issued within the thirty (30) day period or within the period mutually agreed upon, the successful Bidder may terminate the Standard Form of Agreement between Barry County Road Commission and the Contractor without further liability on the part of either party.
BARRY COUNTY ROAD COMMISSION
HASTINGS, MICHIGAN

SPECIFICATIONS

To construct +/- 46,000 sqft of new roof on existing Maintenance garage.

Remove 12 existing vents currently not in use.

Re-flash area where gable end and eve meet directed by the shop superintendent.

Include all warranty information.

RESPONSIBILITIES OF CONTRACTOR

A. Responsibility for and Supervision of Construction. Unless otherwise stated herein, Contractor shall be solely responsible for all construction under this Contract, including the methods, techniques, sequences, procedures, and means, and for coordination of all work. Contractor shall supervise and direct the work to the best of Contractor's ability and give it all attention necessary for such proper supervision and direction.

B. Discipline and Employment. Contractor shall maintain at all times strict discipline among Contractor's employees, and contractor agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he or she was employed.

C. Furnishing of Labor, Materials, etc. Unless otherwise stated herein, Contractor shall provide and pay for all labor, materials, and equipment, including tools, construction equipment, and machinery, utilities, including water, transportation, and all other facilities and services necessary for the proper completion of work on the project in accordance with the Contract Documents.

D. Payment of Taxes; Procurement of Licenses and Permits. Contractor shall pay all taxes required by law in connection with work on the project in accordance with this agreement including sales, use, and similar taxes, and shall secure all license and permits necessary for proper completion of the work, paying the fees for such licenses and permits.

E. Compliance with Laws and Regulations. Contractor shall comply with all laws and ordinances, and the rules, regulations or orders of all public authorities relating to the performance of the work under and pursuant to this Agreement including, but not limited to, the Occupational Safety and Health Act of 1970, the Michigan Occupational Safety
and Health Act, and the rules and regulations of the Michigan Construction Safety Commission.

F. Responsibility for Negligence of Employees and Subcontractors. Contractor assumes full responsibility for acts, negligence or omissions of all of Contractor's employees on the project, for those of Contractor's subcontractors and their employees, and for those of all other persons doing work under a contract with Contractor.

H. Responsibility of Subcontractors. The Contractor shall require any subcontractor hired by the Contractor for the purpose of performing any of the work described by the Contract documents to be bound by all of the terms and conditions of the Contract documents and to perform the work in accordance with the Contract documents. Each and every condition of the Contractor documents, including without limitation, the RESPONSIBILITIES OF THE CONTRACTOR, shall be made a condition of each subcontract entered into by the Contractor in conjunction with the performance of the work.

PROGRESS CLAUSE

The successful bidder shall be required to submit a Progress Schedule, giving an outline of this proposed order of work and to indicate the dates for completion of the work. This outline, when approved by the Road Commission, will become a part of the contract.

1. The Barry County Road Commission reserves the right to (a) reject this Bid; (b) reject the bid of any Bidder whom it deems to be non-responsible; (c) reject the bid of any Bidder that it believes would not be in the best interest of the project; (d) waive all informalities not involving price, time, or changes in the work; and (e) negotiate contract terms with the successful Bidder. If the contract is to be awarded, the Barry County Road Commission will award the contract to the Bidder whose bid is in the best interest of the Barry County Road Commission, as determined in its sole discretion. The Road Commission also reserves the right to extend this contract into future years at the request of the contractor when deemed by the Board to be in the best interest of the Barry County Road Commission.
STANDARD FORM OF AGREEMENT
between
Barry County Road Commission and Contractor

This agreement is made between the Barry County Road Commission ("Road Commission") and the undersigned contractor ("Contractor").

Name of the Work:  New Roof over Maintenance Garage

The Road Commission and the Contractor agree as follows:

1. **The Work.** The Contractor shall fully perform the Work described in the Contract Documents. The "Contract Documents" include all of the Bidding Documents, project plans, this agreement as fully completed and executed, any addenda, and any subsequent modifications to this agreement. The term "Work" means the construction and/or services required by the Contract Documents, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. In the event of inconsistencies or ambiguities within the Contract Documents or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall (a) provide to the better quality or greater quantity of Work, and (b) comply with the more stringent requirement.

2. **Date of Commencement; Substantial Completion and Liquidated Damages.** The date of commencement of the Work shall be the date stated in a notice to proceed issued by the Road Commission. The Contractor shall achieve Substantial Completion as stated in the contract documents, subject to adjustments provided in this agreement. If the Contractor fails to achieve Substantial Completion within the Contract Time, the Road Commission shall be entitled to retain or recover from the Contractor as liquidated damages, and not as a penalty, $500.00 per day commencing upon the first day following the expiration of the Contract Time and continuing until the actual date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Road Commission will incur as a result of delayed completion of the work.

3. **Contract Sum.** The Road Commission shall pay the Contractor the unit prices for each item as bid on the bid form for the Contractor's performance of the Contract. The Contract Sum shall be the aggregate of all pay items calculated based upon as built quantities.

4. **Progress Payments.** The Contractor shall make applications for payments to the Road Commission in a form satisfactory to the Road Commission ("Application for Payment"). The Road Commission will, within 10 days after receipt of an Application for Payment, either approve the application, subject to any retainage requirements, or notify the Contractor in writing of the Road Commission's reasons for disapproving the application in whole or in part. Payment on approved Applications for Payment shall be made within five days of the approval. When the reasons for withholding payment are removed, payment will be approved and made for amounts...
previously withheld, subject to any retainage requirements. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Road Commission no later than the time of payment. The Road Commission shall have no obligation to pay or see to the payment of money to a subcontractor except as otherwise required by law. Neither an authorization of payment nor a progress payment shall constitute acceptance of the Work not in accordance with the Contract Documents.

5. **Retainage.** Notwithstanding any other payment provision in this agreement, pursuant to Act 524 of the Michigan Public Acts of 1980, if the contract sum is in excess of $30,000 the Road Commission shall retain a portion of each progress payment otherwise due which shall be limited to the following: (a) 10% of the dollar value of all Work in place until the Work is 50% in place; and (b) after the Work is 50% in place, additional retainage shall not be withheld unless the Road Commission determines that the Contractor is not making satisfactory progress or for other specific cause relating to the Contractor’s performance under this agreement. Retained funds shall be held, administered and released in accordance with said Act 524.

6. **Substantial Completion.** Substantial Completion is the state in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Road Commission can occupy and utilize the Work for its intended use. When the Road Commission reasonably determines that the Work is substantially complete, it shall so notify the Contractor in writing, which notice shall establish the date of Substantial Completion. The Contractor shall finish all items on the list accompanying the notice of Substantial Completion within the time stated in the notice.

7. **Final Completion and Final Payment.** Following Substantial Completion, and upon receipt of written notice that the Work is ready for final inspection and acceptance, and upon receipt of a final Application for Payment, the Road Commission will promptly review the Work and, when the Road Commission finds the Work is complete and fully complies with the Contract Documents, it will promptly authorize and make final payment; provided, however, final payment shall not become due until the Contractor has delivered to the Road Commission a complete release of all liens arising out of this agreement or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Road Commission to indemnify the Road Commission against such lien.

The making of final payment shall constitute a waiver of claims by the Road Commission, except those arising from: (a) liens, claims, security interests or encumbrances arising out of this agreement and unsettled; (b) failure of the Work to comply with the requirements of the Contract Documents; or (c) terms of special warranties required by the Contract Documents. Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims against the Road Commission by that payee.

8. **Road Commission’s Right to Stop and Carry Out the Work.** If the Contractor fails to carry out the Work in accordance with the requirements of the Contract Documents, the Road Commission may issue a written order to the Contractor to stop the Work,
or any portion thereof, until the cause of such order is eliminated and the Road Commission is provided adequate assurance that the cause will not reoccur; provided, however, the right of the Road Commission to stop the Work shall not give rise to a duty on the part of the Road Commission to exercise this right for the benefit of the Contractor or any other person. If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of this agreement, and the same is not cured by the Contractor within 10 days of written notice from the Road Commission to the Contractor, the Road Commission, without prejudice to any other remedy the Road Commission may have and with or without terminating this agreement, may make good such deficiencies and may deduct the actual cost thereof, including the Road Commission’s expenses and compensation for architects and other professionals made necessary thereby, from the payment then or thereafter due the Contractor.

9. **Supervision and Construction Procedures.** The Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, unless the Contract Documents give specific instructions concerning these matters. The Contractor shall be responsible to the Road Commission for acts and omissions of the Contractor’s employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its subcontractors.

10. **Labor and Materials.** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, machinery, utilities, transportation, and other facilities and services necessary for the proper performance and completion of the Work. The Contractor’s services, and those of the Contractor’s agents, employees, consultants, subcontractors and sub-subcontractors, shall be performed in a skillful and competent manner, exercising due and reasonable care, consistent with the recognized standards in the industry and the standards and practices specified in the Contract Documents. The Contractor shall comply with all minimum wage and living wage laws. The Contractor shall deliver, handle, store and install materials in accordance with manufacturer’s instructions. The Contractor shall inspect all materials as delivered to the Work site and shall reject any materials that will not conform with the Contract Documents when properly installed.

11. **Warranty.** In addition to all implied warranties, Contractor warrants to the Road Commission and its assigns that all materials and equipment incorporated in the Work shall be new unless otherwise specified, and that the Work and all materials and equipment incorporated therein shall conform to the specifications, drawings, samples, and other descriptions set forth in the Contract Documents and shall be merchantable, free from faults and defects, and of the grade and workmanship specified in the Contract Documents. Work, materials and equipment not conforming to these requirements, including substitutions not properly authorized and approved, shall be deemed defective. All labor and workmanship shall be the best grade of their respective kinds for the purpose, shall at minimum meet industry standards in effect at the time the Work is performed, and shall be free from defects so that the results of such labor will yield only first-class results. If required by the Road Commission, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor’s warranty excludes remedy for damage or defects caused by abuse and/or modification and/or improper
operations by persons other than the Contractor, its subcontractors and agents or by normal wear and tear under normal usage.

All warranties and obligations of Contractor set forth above or elsewhere in this agreement are not intended as a limitation but are in addition to all other express warranties set forth in this agreement and such other warranties as are implied by law, custom and/or usage of trade. Contractor and its surety or sureties shall be liable for the satisfaction and full performance of the warranties set forth herein or elsewhere in the Contract Documents. These warranties shall survive acceptance of the Work under this agreement and termination of this agreement.

12. **Taxes; Permits; Fees and Notices.** The Contractor shall pay all sales, consumer, use and other similar taxes. The Contractor shall secure and pay for any and all permits and governmental fees, licenses and inspections necessary for proper performance and completion of the Work. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work.

13. **Cleaning Up.** The Contractor shall keep the Work area and surrounding area free from accumulation of waste materials or rubbish caused by operations under this agreement. At completion of the Work, the Contractor shall remove from and about the Work area all waste materials, rubbish, the Contractor’s tools, equipment, machinery and surplus materials.

14. **Indemnification.** To the fullest extent permitted by law, the (Contractor/Engineer/Architect) shall indemnify and hold harmless the Road Commission (or “Owner” or other designation used in the remainder of the Contract) and its agents and employees from and against all claims, damages, losses, and expenses including, but not limited to, attorneys’ fees, arising out of or resulting from the performance of this Contract (or “Agreement” or other designation used in the remainder of the Contract) including claims, damages, losses, and expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extents caused by fault, negligent acts, or omissions of the (Contractor/Engineer/Architect), a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage loss or expense is caused in part by the parties indemnified hereunder. This obligation does not include an obligation to indemnify the parties indemnified hereunder for their sole negligence and shall not be construed to negate or modify other rights or obligations of indemnity that otherwise exist as to the parties or persons described herein.”

15. **Administration of the Agreement.** The Road Commission will provide administration of this agreement. The Road Commission will review the Work, but shall not be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Road Commission will not have control over or charge of and will not be responsible for acts or omissions of the Contractor or its subcontractors, employees or agents, or any other person performing portions of the Work. The Road Commission will have authority to reject Work that does not conform to the Contract Documents.

16. **Claims and Disputes.** Claims, disputes and other matters in question arising out of or relating to the Contract Documents that are not resolved amicably by the Road Commission
and the Contractor shall be resolved as set forth in this paragraph. All claims, disputes and other matters in question involving amounts in dispute between the Contractor and the Road Commission of less than $100,000 shall be decided by arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association then in effect as modified hereby. Claims, disputes and other matters in question involving amounts in dispute between the Contractor and the Road Commission of $100,000 or more may be submitted to arbitration only with the written consent of both the Road Commission and the Contractor.

Any arbitration arising out of or relating to the Contract Documents, or the breach thereof, shall include as parties to the arbitration any other entities or persons whom the Road Commission or the Contractor believes to be substantially involved in a common question of fact or law, and the Contractor's contracts with subcontractors or others performing Work shall require such joinder. In the event that more than one claim, dispute, or other matter in question, shall be in existence at the same time, the Road Commission may, at its sole option, decide which of such claims, disputes or other matters in question shall be aggregated for purposes of determining whether the $100,000 arbitration threshold referred to above has been reached. Such decision shall be final and unappealable, and no arbitration shall be authorized to consider, decide, or make any award of any claim or matter which is not properly made the subject of arbitration in strict accordance with the provisions of this paragraph 16.

If either the Road Commission or the Contractor wishes to submit to arbitration any claim, dispute or other matter in question involving amounts in dispute between the Contractor and the Road Commission of less than $100,000, the submitting party shall file a written notice of demand for arbitration with the American Arbitration Association and with the other party hereto. In the event that either the Road Commission or the Contractor wishes to request arbitration of any claim, dispute or other matter in question involving amounts in dispute between the Contractor and the Road Commission of $100,000 or more, such party shall deliver a written notice of request for arbitration to the other party specifically describing the claims, disputes and other matters in question which the requesting party wishes to submit to arbitration, but no arbitration shall occur, nor shall any arbitrator be authorized to consider, decide or make any award of any claim, dispute or matter in question involving amounts in dispute between the Contractor and the Road Commission of $100,000 or more unless within 14 days after receiving the written notice of request for arbitration, the non-requesting party executes and delivers to the requesting party a written acceptance of the request for arbitration so made and files a written notice of demand for arbitration with the American Arbitration Association.

The Road Commission and the Contractor shall agree on the appointment of a single arbitrator within 30 days, or such further mutually agreeable time, of the filing of the arbitration. If the parties are unable to agree on a single arbitrator within such time, the arbitrator shall be appointed by the American Arbitration Association.

The parties may jointly (but not unilaterally) elect to have the discovery rights and procedures provided by the Federal Rules of Civil Procedure available and enforceable within the arbitration proceeding.

The arbitration shall take place in Grand Rapids, Michigan. Any request or demand for arbitration hereunder shall be made before the date when institution of legal or equitable
proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

This agreement to arbitrate shall be specifically enforceable in accordance with its terms by the parties under the prevailing arbitration law. Any award rendered by arbitrators shall be final and enforceable by any party to the arbitration, and judgment may be rendered upon it in accordance with applicable law in any court having jurisdiction thereof.

Unless otherwise agreed in writing or unless the Road Commission exercises its rights under paragraph 8 above, Contractor shall carry on with the performance of its services and duties hereunder during the pendency of any claim, dispute, other matter in question or arbitration or other proceeding to resolve any claim, dispute or other matter in question, and the Road Commission shall continue to make payments in accordance with the Contract Documents, but the Road Commission shall be under no obligation to make payments on or against such claims, disputes, or other matters in question, during the pendency of any arbitration or other proceeding to resolve such claims, disputes or other matters in question.

17. **Claims for Consequential Damages.** The Contractor waives claims against the Road Commission for consequential damages arising out of or relating to this agreement, which includes damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

18. **Subcontractors.** The Contractor shall not subcontract with any person to whom the Road Commission has reasonably and timely objected. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. All contracts between the Contractor and its subcontractors shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations which Contractor assumes toward the Road Commission under the Contract Documents.

19. **Changes in the Work.** The Road Commission, without invalidating this agreement, may order changes in the Work within the general scope of the agreement consisting of additions, deletions or other revisions, the Contract Sum and Contract Time be adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Road Commission and the Contractor, or by written Construction Change Directive signed by the Owner. The cost or credit to the Road Commission from the change of the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive, by the Contractor's cost of labor, materials, equipment, and reasonable overhead and profit. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and the Contract Time shall be equitably adjusted.

20. **Time.** Time limits stated in the Contract Documents are of the essence of the agreement. By signing this agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work. If the Contractor is delayed in the performance of the Work by any improper action of the Road Commission and is in no ways caused by or
resulting from default or collusion on the part of the Contractor, or by any other cause which the Contractor could not reasonably control or circumvent, then the scheduled completion date shall be extended for a period equal to the length of such delay if within 14 days after the beginning of any such delay the Contractor delivers to the Owner a request for extension for such delay and such request is approved by the Road Commission by means of a Change Order, which approval shall not be unreasonably withheld.

Extension of time shall be the Contractor’s sole and exclusive remedy for any such delay unless the same shall have been caused by acts constituting intentional interference by the Road Commission with the Contractor’s performance of the Work where such acts continue after the Contractor’s written notice of the Owner of such interference. The Road Commission’s exercise of any of its rights under the Contract Documents regarding changes in the Work, regardless of the extent or number of such changes, or the Road Commission’s exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work shall not under any circumstances be construed as intentional interference with the Contractor’s performance of the Work.

21. **Environmental Matters.** The Contractor shall not, under any circumstance, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any applicable laws, rules or regulations which are now or hereafter promulgated by federal, state and/or local authorities. The Contractor shall comply with all environmental requirements applicable to Work performed under this agreement and shall be responsible for compliance with all hazardous substance laws, rules and regulations. “Hazardous substance” includes all substances which are or may be identified as such in 40 C.F.R., Part 261 or other applicable federal, state and/or local laws or regulations. The Contractor agrees, at its expense, to take all actions necessary to protect third parties, including without limitation, employees and agents of the Road Commission from any exposure to, or hazards of, hazardous and/or toxic wastes or substances generated or utilized in Contractor’s operations. Contractor agrees to report immediately to the Road Commission all discharges, releases and spills of hazardous substances and/or wastes required to be reported by law.

22. **Insurance.** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in Michigan such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers’ compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

(b) claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor’s employees;

(c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor’s employees;
(d) claims for damages insured by usual personal injury liability coverage;

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

(g) claims for bodily injury or property damage arising out of completed operations; and

(h) claims involving contractual liability insurance applicable to the Contractor’s obligations.

The insurance required by this paragraph 22 shall be written for not less than limits of liability listed below or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Each policy shall name the Board of County Road Commissioners of Barry County, the Barry County Road Commission and its agents and employees as additional insured.

**Bodily Injury and Property Damage Other Than Automobile.** Unless otherwise specifically required by special provisions in the proposal, the minimum limits of property damage and bodily injury liability covering each contract shall be:

**Bodily Injury and Property Damage Liability:**

<table>
<thead>
<tr>
<th></th>
<th>Limit</th>
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<tbody>
<tr>
<td>Each Occurrence</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Aggregate</td>
<td>$2,000,000</td>
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</tbody>
</table>

**Bodily Injury and Property Damage Liability Automobile.** Unless otherwise specifically required by special provisions, the minimum limits of bodily injury liability and property damage liability shall be:

**Bodily Injury Liability:**

<table>
<thead>
<tr>
<th></th>
<th>Limit</th>
</tr>
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<tbody>
<tr>
<td>Each Person</td>
<td>$500,000</td>
</tr>
<tr>
<td>Each Occurrence</td>
<td>$1,000,000</td>
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</table>

**Property Damage Liability:**

<table>
<thead>
<tr>
<th></th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each Occurrence</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

**Combined Single Limit for Bodily Injury and Property Damage Liability:**

<table>
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<tr>
<th></th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each Occurrence</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

Certificates of insurance acceptable to the Road Commission shall be filed with the Road Commission prior to commencement of the Work. These certificates and the insurance policies required by this paragraph 22 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Road Commission.

The Road Commission shall be responsible for purchasing and maintaining the Road Commission’s usual liability insurance.

Standard Form of Agreement
23. **Waivers of Subrogation.** The Road Commission and the Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the Work, except such rights as they have to proceeds of such held by the Road Commission as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of 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.

24. **Payment and Performance Bonds.** The Contractor shall furnish to the Road Commission and keep in force during the term of this agreement performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under this agreement and will pay for all labor and materials furnished for the Work. Such bonds shall be issued in a form and by a surety reasonably acceptable to the Road Commission, shall be submitted to the Road Commission for approval as to form, shall name the Road Commission as obligee and shall be in an amount equal to at least 100% of the Contract Sum (as the same may be adjusted from time to time pursuant to this agreement). The Contractor shall deliver the executed, approved bonds to the Road Commission within seven days after receipt of notice of the award of the contract.

25. **Correction of Work.** The Contractor shall promptly correct Work rejected by the Road Commission or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections made necessary thereby, shall be at the Contractor’s expense.

In addition to the Contractor’s other warranty obligations, if, within one year after the Work or designated accepted portion thereof is placed into service and occupied by Road Commission for the purpose intended, or after the date for commencement of warranties established elsewhere in this agreement, or by terms of an applicable special warranty required by the Contract Documents, the Road Commission gives written notice of any breach of warranty, including, but not limited to, notice of Work found to be defective, incomplete, or not in accordance with the requirements of the Contract Documents, the affected part or parts of the Work thereof shall be promptly repaired, corrected, or replaced by the Contractor, and the Contractor shall conduct such tests as the Road Commission may require to verify that such repairs, corrections, and replacements comply with the requirements of this agreement. The Contractor warrants such repaired, corrected, or replaced work against defective materials and workmanship for an additional period equal to the aforementioned warranty period, from and after acceptance of such warranty work by the Road Commission. All costs incidental to any required repair, correction, replacement and testing, including the removal, replacement and reinstallation of equipment necessary to gain access, and all other costs incurred as the result of breach of warranty shall be borne by the Contractor.
26. **Supplier must comply with Appendix A attached hereto.**

27. **Termination of this Agreement.**

(a) If the Road Commission fails to make payment of approved Work for a period of 30 days following such approval, the Contractor may, upon seven additional days' written notice to the Road Commission, terminate this agreement and recover from the Road Commission payment for Work performed and for proven loss with respect to materials, equipment, tools, and reasonable overhead and profit, and for damages applicable to the Work.

(b) The Road Commission may terminate this agreement if the Contractor:

1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

2. fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;

3. persistently disregards the laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

4. otherwise is guilty of a breach of a provision of the Contract Documents.

When any of the above reasons exist, the Road Commission may, without prejudice to any other remedy, and after giving the Contractor seven days written notice, cease making further payments to the Contractor until the Work is finished and terminate this agreement and take possession of the site and of all materials, equipment, tools thereon owned by the Contractor and may finish the Work by whatever reasonable method the Road Commission may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Road Commission in finishing the Work. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including all damages, expenses (including attorneys’ fees) made necessary thereby, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. These obligations shall survive the termination of this agreement.

28. **Assignment.** The Road Commission may assign this agreement and the other Contract Documents and may delegate its obligations. The Contractor shall not assign or transfer an interest in this agreement without the prior written consent of the Road Commission.

29. **Governing Law; Jurisdiction.** This agreement shall be governed by and construed in accordance with Michigan law, not applying its choice of law principals. Each party agrees to be subject to the personal jurisdiction of Michigan courts and agrees that Michigan shall be the venue of any court action related to this agreement.
This agreement is entered into between the Contractor and the Road Commission effective ____________________.

Contractor:

________________________________________

By: _____________________________

Its: _____________________________

Road Commission:

Barry County Road Commission

By: _____________________________

Its: _____________________________
**APPENDIX A**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation, Title 49, code of Federal Regulations, Part 21 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **Barry County Road Commission** to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Non-compliance:** In the event of the contractor’s non-compliance with the non-discrimination provisions of this contract, the **Barry County Road Commission** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

   (b) Cancellation, termination or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the **Barry County Road Commission** may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the **Barry County Road Commission** to enter into such litigation to protect the interests of the County, and, in addition, the contractor may request the State highway department to enter into such litigation to protect the interests of the State and/or the United States to enter into such litigation to protect the interests of the United States.
CONSTRUCTION CONTRACTS WITH CERTAIN PUBLIC AGENCIES
Act 524 of 1980

AN ACT to provide for the terms of certain construction contracts with certain public agencies; to regulate the payment and retainerage of payments on construction contracts with certain public agencies; and to provide for the resolution of certain disputes.


The People of the State of Michigan enact:

125.1561 Definitions.
Sec. 1. As used in this act:
(a) "Agent" means the person or persons agreed to or selected by the contractor and the public agency pursuant to section 4(2).
(b) "Architect or professional engineer" means an architect or professional engineer licensed under Act No. 299 of the Public Acts of 1980, being sections 339.101 to 339.2601 of the Michigan Compiled Laws, and designated by a public agency in a construction contract to recommend progress payments.
(c) “Construction contract” or “contract” means a written agreement between a contractor and a public agency for the construction, alteration, demolition, or repair of a facility, other than a contract having a dollar value of less than $30,000.00 or a contract that provides for 3 or fewer payments.
(d) “Contract documents” means the construction contract; instructions to bidders; proposal; conditions of the contract; performance bond; labor and material bond; drawings; specifications; addenda issued before execution of the construction contract and all modifications issued subsequently.
(e) “Contractor” means an individual, sole proprietorship, partnership, corporation, or joint venture, that is a party to a construction contract with a public agency.
(f) “Facility” means a building, utility, road, street, boulevard, parkway, bridge, ditch, drain, levee, dike, sewer, park, playground, or other structure or work that is paid for with public funds or a special assessment.
(g) “Progress payment” means a payment by a public agency to a contractor for work in place under the terms of a construction contract.
(h) “Public agency” means this state, or a county, city, township, village, assessment district, or other political subdivision, corporation, commission, agency, or authority created by law. However, public agency does not include the state transportation department, a school district, junior or community college, the Michigan state housing development authority created in Act No. 346 of the Public Acts of 1966, as amended, being sections 125.1401 to 125.1496 of the Michigan Compiled Laws, and a municipal electric utility or agency. “Assessment district” means the real property within a district area upon which special assessments are levied or imposed for the construction, reconstruction, betterment, replacement, or repair of a facility to be paid for by funds derived from those special assessments imposed or levied on the benefited real property.
(i) “Retainerage” or “retained funds” means the amount withheld from a progress payment to a contractor pursuant to section 3.


125.1562 Construction contract; designation of person to submit written requests for progress payments; designation of person to whom requests for progress payments to be submitted; manner and times of submissions; deferring the processing of progress payments; payment of requested progress payment; failure of public agency to make timely progress payment; interest.
Sec. 2. (1) The construction contract shall designate a person representing the contractor who will submit written requests for progress payments, and a person representing the public agency to whom request for progress payments are to be submitted. The written requests for progress payments shall be submitted to the designated person in a manner and at such times as provided in the construction contract.
(2) The processing of progress payments by the public agency may be deferred by the public agency until work having a prior sequence, as provided in the construction documents, is in place and is approved.
(3) Each progress payment requested, including reasonable interest if requested under subsection (4), shall be

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CONSTRUCTION CONTRACTS WITH CERTAIN PUBLIC AGENCIES

paid within 1 of the following time periods, whichever is later:

(a) Thirty days after the architect or professional engineer has certified to the public agency that work is in place in the portion of the facility covered by the applicable request for payment in accordance with the contract documents.

(b) Fifteen days after the public agency has received the funds with which to make the progress payment from a department or agency of the federal or state government, if any funds are to come from either of those sources.

(4) Upon failure of a public agency to make a timely progress payment pursuant to this section, the person designated to submit requests for progress payments may include reasonable interest on amounts past due in the next request for payment.


125.1563 Retaining portion of each progress payment to assure proper performance of construction contract; retaiilage; limitations; exceeding pro rata share of public agency’s matching requirement; commingling and deposit of retained funds; releasing to contractor retaiilage and interest earned on retaiilage; irrevocable letter of credit.

Sec. 3. (1) To assure proper performance of a construction contract by the contractor, a public agency may retain a portion of each progress payment otherwise due as provided in this section.

(2) The retaiilage shall be limited to the following:

(a) Not more than 10% of the dollar value of all work in place until work is 50% in place.

(b) After the work is 50% in place, additional retaiilage shall not be withheld unless the public agency determines that the contractor is not making satisfactory progress, or for other specific cause relating to the contractor’s performance under the contract. If the public agency so determines, the public agency may retain not more than 10% of the dollar value of work more than 50% in place.

(3) The retaiilage funds shall not exceed the pro rata share of the public agency’s matching requirement under the construction contract and shall not be commingled with other funds of the public agency and shall be deposited in an interest bearing account in a regulated financial institution in this state wherein all such retaiilage funds are kept by the public agency which shall account for both the retaiilage and interest on each construction contract separately. A public agency is not required to deposit retaiilage funds in an interest bearing account if the retaiilage funds are to be provided under a state or federal grant and the retaiilage funds have not been paid to the public agency.

(4) Except as provided in section 4(7) and (8), retaiilage and interest earned on retaiilage shall be released to a contractor together with the final progress payment.

(5) At any time after 94% of work under the contract is in place and at the request of the original contractor, the public agency shall release the retaiilage plus interest to the original contractor only if the original contractor provides to the public agency an irrevocable letter of credit in the amount of the retaiilage plus interest, issued by a bank authorized to do business in this state, containing terms mutually acceptable to the contractor and the public agency.


125.1564 Construction contract; agreement to submit matters described in subsection (3) to decision of agent; designation of agent; dispute resolution process; use; agent to receive pertinent information and provide opportunity for informal meeting; decision of agent to be final and binding; vacation of decision by circuit court; dispute resolution resulting in decision; final progress payment to original contractor where public agency contracts with subsequent contractor.

Sec. 4. (1) The construction contract shall contain an agreement to submit those matters described in subsection (3) to the decision of an agent at the option of the public agency.

(2) If a dispute regarding a matter described in subsection (3) arises, the contractor and the public agency shall designate an agent who has background, training, and experience in the construction of facilities similar to that which is the subject of the contract, as follows:

(a) In an agreement reached within 10 days after a dispute arises.

(b) If an agreement cannot be reached within 10 days after a dispute arises, the public agency shall designate an agent who has background, training, and experience in the construction of facilities similar to that which is the subject of the contract and who is not an employee of the agency.

(3) The public agency may request dispute resolution by the agent regarding the following:

(a) At any time during the term of the contract, to determine whether there has been a delay for reasons that were
CONSTRUCTION CONTRACTS WITH CERTAIN PUBLIC AGENCIES

within the control of the contractor, and the period of time that delay has been caused, continued, or aggravated by actions of the contractor.

(b) At any time after 94% of work under the contract is in place, whether there has been an unacceptable delay by the contractor in the performance of the remaining 6% of work under the contract. The agent shall consider the terms of the contract and the procedures normally followed in the industry and shall determine whether the delay was for failure to follow reasonable and prudent practices in the industry for completion of the project.

(4) This dispute resolution process shall be used only for the purpose of determining the rights of the parties to retained funds and interest earned on retained funds and is not intended to alter, abrogate, or limit any rights with respect to remedies that are available to enforce or compel performance of the terms of the contract by either party.

(5) The agent may request and shall receive all pertinent information from the parties and shall provide an opportunity for an informal meeting to receive comments, documents, and other relevant information in order to resolve the dispute. The agent shall determine the time, place, and procedure for the informal meeting. A written decision and reasons for the decision shall be given to the parties within 14 days after the meeting.

(6) The decision of the agent shall be final and binding upon all parties. Upon application of either party, the decision of the agent may be vacated by order of the circuit court only upon a finding by the court that the decision was procured by fraud, duress, or other illegal means.

(7) If the dispute resolution results in a decision:

(a) That there has been a delay as described in subsection (3)(a), all interest earned on retained funds during the period of delay shall become the property of the public agency.

(b) That there has been unacceptable delay as described in subsection (3)(b), the public agency may contract with a subsequent contractor to complete the remaining 6% of work under the contract, and interest earned on retained funds shall become the property of the public agency. A subsequent contractor under this subdivision shall be paid by the public agency from the following sources until each source is depleted, in the order listed below:

(i) The dollar value of the original contract, less the dollar value of funds already paid to the original contractor and the dollar value of work in place for which the original contractor has not received payment.

(ii) Retainage from the original contractor, or funds made available under a letter of credit provided under section 3(5).

(iii) Interest earned on retainage from the original contractor, or funds made available under a letter of credit provided under section 3(5).

(8) If the public agency contracts with a subsequent contractor as provided in subsection (7)(b), the final progress payment shall be payable to the original contractor within the time period specified in section 2(3). The amount of the final progress payment to the original contractor shall not include interest earned on retained funds. The public agency may deduct from the final progress payment all expenses of contracting with the subsequent contractor. This act shall not impair the right of the public agency to bring an action or to otherwise enforce a performance bond to complete work under a construction contract.


125.1565 Construction contracts to which act applicable.

Sec. 5. (1) Except as provided in subsection (2), this act shall apply only to a construction contract entered into after the effective date of this act.

(2) For a construction contract entered into before the effective date of this act, the provisions of this act may be implemented by a public agency, through a contract amendment, upon the written request of the contractor, with such consideration as the public agency considers adequate.


125.1566 Effective date.

Sec. 6. This act shall take effect January 1, 1983.

BARRY COUNTY ROAD COMMISSION

FINANCIAL DISCLOSURE STATEMENT FOR CONTRACTING WITH
THE BARRY COUNTY ROAD COMMISSION

I. It is the policy of the Barry County Road Commission to comply in all respects with the Contracts of Public Servants with Public Entities statute, Act 317 of 1968, as amended, MCL 15.321, et seq. In order for the Barry County Road Commission to comply with these legal requirements, it is necessary that persons seeking to enter into contracts with the Barry County Road Commission disclose certain information which will allow for an evaluation of compliance with the statute. Anyone seeking to enter into a contract with the Barry County Road Commission shall supply the information requested below. Additional information may be requested based upon the responses set forth below.

II. Please identify the contract you are seeking to enter into with the Barry County Road Commission:

________________________________________________________________________

III. Please indicate whether any of the following applies to you or the person or entity seeking the contract with the Barry County Road Commission:

☐ You are an official or employee of the Barry County Road Commission.

☐ An official or employee of the Barry County Road Commission is a partner, member or employee of the co-partnership or unincorporated association which seeks to enter into the contract with the Barry County Road Commission.

☐ An official or employee of the Barry County Road Commission is a stockholder of the private corporation which seeks to enter into the contract with the Barry County Road Commission.

☐ An official or employee of the Barry County Road Commission owns stock listed on a stock exchange with a present total market value in excess of $25,000 in the corporation which seeks to enter into the contract with the Barry County Road Commission.

☐ An official or employee of the Barry County Road Commission is a director, officer or employee of the corporation which seeks to enter into the contract with the Barry County Road Commission.

☐ An official or employee of the Barry County Road Commission is a beneficiary or trustee of the trust seeking to enter into a contract with the Barry County Road Commission.

IV. I certify that the information set forth above is true and accurate based upon my personal knowledge and an investigation of the records and documents available to me.

Date: 

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