

Project Manual

West Holmes Local School
District

Field House Roof

November 21, 2023

NOTICE TO BIDDERS

Sealed bids will be received by the Board of Education of the West Holmes Local School District for the Field House Roof.

The bids will be received at the office of the Treasurer, 28 West Jackson Street, Millersburg, Ohio, 44654 until noon local time on December 8, 2023 and will be read publicly and recorded immediately thereafter. Late bids will not be accepted and will be returned unopened. Faxed and emailed bids are not permitted.

The estimated Cost of the Work for the project, including any alternates, is as follows: \$125,000.

The date of substantial completion for the Work is May 1, 2024.

Bids shall be addressed to the Treasurer of the West Holmes Local School District in a sealed opaque envelope and be clearly marked on the envelope as a bid for the applicable improvements for which the bidder is submitting its bid along with the bidder's name.

This legal notice and the bidding documents, including copies of the drawings, specifications, project manual, bid form, forms of contract and bond, and addenda may be obtained on the School District's website at <https://westholmes.org/>

Inquiries regarding the bidding documents, including requests for clarifications or interpretations or proposal of substitutions, shall be submitted by e-mail at: mneece@westholmes.org. The subject line of the e-mail should clearly read "Bids for Field House Roof".

There will be a Pre-Bid Meeting for all Bidders at 10:00 a.m. local time on November 30, 2023 10901 State Route 39, Millersburg, Ohio, 44654. This meeting will be followed by a tour of the project site.

Instructions to Bidders

OWNER:

Board of Education of the West Holmes Local School District
28 W. Jackson Street
Millersburg, Ohio 44654

PROJECT:

Field House Roof

INQUIRIES REGARDING BIDDING DOCUMENTS:

Unless provided otherwise in the legal notice advertising the solicitation of Bids for the Project, inquiries regarding the Bidding Documents, including requests for clarifications or interpretations, request for information, or proposal of substitutions shall be submitted to the Owner by e-mail at:

mneece@westholmes.org

The subject line of the e-mail should clearly read "Bids for Field House Roof".

ARTICLE 1. DEFINITIONS

1.1 Bidding Documents include the Bidding Requirements and the Contract Documents plus any other item designated as a Bidding Document. The Bidding Requirements consist of the Notice to Bidders, Instructions to Bidders, the Bid Form, Bid Guaranty, bond (as required under Section 4.2.1), and other sample bidding and contract forms. The Contract Documents, which are inclusive of the Bidding Requirements, are enumerated and defined in the Owner-Contractor Agreement. Definitions set forth in the Owner-Contractor Agreement or in other Contract Documents are applicable to the Bidding Documents.

1.2 Addenda are written or graphic instruments issued by the Owner prior to the opening of Bids which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

1.3 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

1.4 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

1.5 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted on the Bid Form in accordance with the Bidding Documents.

1.6 A Bidder is a person or entity who submits a Bid.

1.7 The Bid Form is the form furnished in the Bidding Documents that is to be completed, signed, and submitted containing the Bidder's Bid.

1.8 Bid Guaranty means a bond or other instrument of security authorized by Ohio Revised Code Section 153.54 submitted with the Bid in accordance with Section 4.2 to provide assurance that the Bidder will execute the Agreement.

1.9 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

ARTICLE 2. BIDDER'S REPRESENTATIONS

2.1 The Bidder by making a Bid represents that:

2.1.1 The Bidder has read and understands the Bidding Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

2.1.2 The Bid is made in compliance with the Bidding Documents.

2.1.3 The Bidder has visited the site and surrounding area, become familiar with the conditions under which the Work is to be performed (including but not limited to the condition, layout and nature of the site and surrounding area; the availability and cost of labor; the availability and cost of materials, supplies and equipment; the costs of temporary utilities required in the Bid; the cost of any required permit or license; the usual weather conditions of the Project location; conditions bearing upon transportation, disposal, handling and storage of equipment, materials and waste; and subsurface and concealed physical conditions and related information provided in the Bidding Documents) and has correlated the Bidder's personal observations with the requirements of Bidding Documents.

2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

2.2 By submitting its Bid, the Bidder understands and agrees that the Contract Sum, based on its Bid and as amended by Change Orders, shall cover all amounts due from the Owner resulting from interference, disruption, hindrance or delay caused by or between Separate Contractors or their agents and employees.

2.3 The Bidder agrees that the Bidder will make no request for additional compensation or mitigation of Liquidated Damages for any such interference, disruption, hindrance or delay, and will accept as full satisfaction an extension of the Contract Time which may be provided by the Owner in accordance with the Bidding Documents.

ARTICLE 3. BIDDING DOCUMENTS

3.1 COPIES

3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Notice to Bidders in the number and for the dollar amount, if any, stated therein.

3.1.2 Bidders shall use complete sets of Bidding Documents in preparing Bids; the Owner does not assume responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

3.1.3 The Owner may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Owner errors, inconsistencies or ambiguities discovered.

3.2.2 Bidders requiring clarification or interpretation of the Bidding Documents shall make a written request for information which shall reach the Owner at least seven (7) days prior to the date for receipt of Bids. By submitting its Bid, each Bidder represents and agrees, based upon its careful and diligent review of the Bidding Documents, that it is not aware of any conflicts, inconsistencies, errors or omissions in the Bidding Documents for which it has not timely notified the Owner. Bidders who fail to timely provide notification and to request clarification will be expected to overcome such conditions without additional compensation.

3.2.3 Interpretations, corrections and changes of the Bidding Documents if determined by the Owner to be warranted will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

3.2.4 In interpreting the Bidding Documents, words describing materials that have a well-known technical or trade meaning, unless otherwise defined in the Bidding Documents, shall be construed in accordance with the well-known meaning recognized by the trade.

3.2.5 When the Bidding Documents refer to a period of time by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday. The term "day" as used in the Instructions to Bidders shall mean a calendar day unless otherwise noted.

3.2.6 Bidder is required to comply with all requirements of the Bidding Documents, regardless of whether the Bidder has actual knowledge of the requirements and regardless of any statement or omission made by the Bidder that might indicate a contrary intention.

3.3 SUBSTITUTIONS

3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Owner at least seven (7) days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted, the reason for the requested substitution, a complete description of the proposed substitution including the name of the material or equipment proposed as the substitute, drawings, performance and test data, any other information necessary for an evaluation, and a certification from the Bidder that the proposed item is equal in quality and all aspects of performance and appearance, to the item specified. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of Separate Contractors that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Owner's decision of approval or disapproval of a proposed substitution shall be final.

3.3.3 If the Owner approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Approvals made in any other manner will not be binding, and Bidders shall not rely upon them. The Owner's decision will be final.

3.3.4 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

3.4 ADDENDA

3.4.1 Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents and to plan rooms where copies of the Bidding Documents are maintained. It is therefore imperative that Bidders provide full and accurate contact information to the Owner, including e-mail addresses. The Addenda may be delivered by e-mail, facsimile, posted to the Owner's website set forth in the Notice to Bidders, posted to an FTP site, or otherwise furnished to each registered plan holder. Addenda will be deemed to have been validly delivered if emailed or otherwise furnished to each firm's contact person of record.

3.4.2 Notwithstanding anything to the contrary in Section 3.4.1, all Bidders will be presumed to have actual knowledge of all Addenda distributed in the manner set forth in Section 3.4.1, and Bidders shall not avail themselves of incomplete knowledge and/or lack of familiarity of the Bidding Documents and any Addenda thereto resulting from the Bidder's failure to register with and provide accurate contact information to the Owner, a Bidder's failure to check the Owner's website, or a Bidder's failure to otherwise ascertain delivery of an Addendum.

3.4.3 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

3.5 If an Addendum is issued within 72 hours prior to the published time for the opening of Bids (excluding Saturdays, Sundays, and legal holidays), then the time for opening of Bids shall be extended one week with no further advertising of Bids required.

3.5.1 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid Form. If the Bidder fails to acknowledge receipt of each Addendum, the Bid may be deemed non-responsive, unless the Bid amount clearly and unambiguously reflects receipt of the Addendum or the Addendum involves only a matter of form and does not affect the price, quantity or quality of the Work to be performed in any material manner.

3.6 BASIS OF DESIGN AND ACCEPTABLE COMPONENTS

3.6.1 The Bidding Documents may list components produced by specific manufacturers to denote kind, quality, or performance requirements. The component listed first is the basis of design component, and other listed components are acceptable components. If the Bidder includes an acceptable component in its Bid, the Bidder is responsible for the costs of coordination and modification required.

ARTICLE 4. BIDDING PROCEDURES

4.1 PREPARATION OF BIDS

4.1.1 The Bidder is strongly encouraged (and required, when designated by Owner as mandatory) to attend any pre-bid meetings where questions will be received regarding the Bidding Documents. Each Bidder will be determined to have actual knowledge of all information provided or discussed at the pre-bid meeting, and additional compensation shall not be based upon the Bidder's failure to attend the pre-bid meeting which results in the Bidder's incomplete knowledge and familiarity of the Project requirements. If not given in the Notice to Bidders, the Owner shall issue notice of the time and place of any pre-bid meeting to each registered plan holder.

4.1.2 Bids shall be submitted on the forms included with the Bidding Documents.

4.1.3 The Owner may solicit Bids which combine two or more bid packages. The individual Base Bid amounts of each separate bid package need not total the combination Base Bid amount. The Owner reserves the right to accept or reject any or all separate Bids or combination Bids, in whole or in part, and in any order.

4.1.4 All blanks on the Bid Form shall be legibly filled in using a non-erasable medium, and interlineations, alterations and erasures must be initialed in ink by the signer of the Bid.

4.1.5 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern where the words are not ambiguous. When the Bidder's

intention and the meaning of the words are clear, omissions or misspellings of words shall not render the words ambiguous.

4.1.6 The wording on the Bid Form shall be used without change, alteration or addition. Any change in the wording or omission of specifying accompanying documents may cause the Bid to be rejected.

4.1.7 When an Alternate is listed on the Bid Form, the Bidder shall fill in the blank with an amount to add to or deduct from the Base Bid. Voluntary Alternates are prohibited from becoming the basis of the Contract award.

4.1.7.1 If no change in the Bid amount is required, indicate “No Change” or “\$0 dollars.”

4.1.7.2 Failure to make an entry, or an entry of “No Bid,” “N/A,” or similar entry for any Alternate shall cause the Bid to be nonresponsive if that Alternate is selected. If the Alternate is not selected, such an entry on that Alternate will not itself render a Bidder nonresponsive.

4.1.7.3 Failure to indicate a negative number will indicate the Bidder’s intent to increase the Base Bid by the amount entered in the applicable blank. Methods for indicating a negative number may include preceding the number by a minus sign, enclosing the number in parenthesis, or, when provided on the Bid Form, by circling “DEDUCT” or similar words.

4.1.8 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation. For a Bid submitted by an agent, the Owner may require submission of a current power of attorney certifying the agent’s authority to bind the Bidder. The Bidder may be required to provide evidence of legal authority to perform within the jurisdiction of the Work.

4.1.9 In determining which Bid is the lowest, the Owner shall consider the Base Bid and any Alternate or Alternates which the Owner decides to accept in the Owner’s sole discretion. The Owner shall have the right to accept Alternates in any order or combination as desired by the Owner and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted. The Bidder further understands and acknowledges that use of add and deduct Alternates is a long held customary practice in the construction industry in the State of Ohio. The Bidder understands that based on Alternates selected by the Owner, the Contract award to the lowest responsible Bidder may result in an award to a Bidder other than the Bidder that submitted the lowest Base Bid.

4.1.10 When two or more Bids are equal, in the whole, or in any part thereof, and are lower than any others, and the Owner has determined the Bidders to be responsive and responsible, the Owner may do either of the following in the Owner’s sole discretion: (1) accept either of such equal bids, but in no case shall the Work be divided between such Bidders, or (2) select one Bidder by lot in the presence of all Bidders in such manner as the Owner shall determine

and such selection shall be final, and if one of the Bidders refuses to participate in or fails to be present, the selection shall be made among the participating Bidders.

4.1.11 UNIT PRICES.

4.1.11.1 If Unit Prices are requested on the Bid Form, the amount of the scheduled quantities shall be included in the Base Bid amount. Unit prices shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the estimated quantities on the Bid Form and the actual quantities provided. If Unit Prices are stated to be sought only for informational purposes, they shall not be included in the Bid amount.

4.1.11.2 Unit Prices shall include all materials, equipment, labor, delivery, installation, and any other cost or expense, in connection with, or incidental to, the performance of that portion of the Work. Unit Prices shall not include the Contractor's fee on account of the associated Unit Price Work. The Bidder shall submit Unit Prices for all items listed.

4.1.11.3 Where there is a conflict between a Unit Price and the extension thereof made by the Bidder, the Unit Price shall govern and a corrected extension of such Unit Price shall be made.

4.1.11.4 The Bidder agrees that the Owner may increase, decrease or delete entirely the scheduled quantities of Work to be done and materials to be furnished after execution of the Contract.

4.1.12 ALLOWANCES

4.1.12.1 If Allowances are provided in the Bidding Documents, including the Bid Form, the amount of each applicable Allowance shall be included in the Base Bid amount. Allowances shall be used solely for the purpose of determining the adjustment to the Contract Sum for the difference between the amount of the Allowance and the actual cost of the related Work provided.

4.2 BID GUARANTY/BOND

4.2.1 A Bid Guaranty payable to the Owner and meeting the requirements of Ohio Revised Code Section 153.54 shall be submitted with the Bidders Bid in the form of either (i) a bid guaranty and contract bond meeting the requirements of Ohio Revised Code Sections 153.54(A)(1), 153.54(B) and 153.571 or (ii) a certified check, cashier's check or letter of credit meeting the requirements of Ohio Revised Code Sections 153.54(A)(2) and 153.54(C). The Bid Guaranty shall serve as an assurance that the Bidder will, upon acceptance of the Bid by the Owner, comply with all conditions for the execution of the Contract within the time specified.

4.2.1.1 The amount of the bid guaranty and contract bond under Section 4.2.1(i) herein should be the full amount of the Bidder's Base Bid plus all add Alternates with no deduction for any deduct Alternates; a percentage is not acceptable. If the blank line on the bid guaranty and contract bond is not filled in, the penal sum will automatically be the full amount of the Base Bid plus all accepted Alternates. If an amount is inserted, then the failure to state an amount equal to or greater than the total of the Base Bid plus all add Alternates that are accepted

shall make the Bid non-responsive. If the successful Bidder provided a bid guaranty and contract bond as its Bid Guaranty under Section 4.2.1(i) and this Subsection 4.2.1.1, then the bid guaranty and contract bond shall become the performance and payment bond.

4.2.1.2 A certified check, cashier's check or letter of credit under Section 4.2.1(ii) herein should be equal to ten (10) percent of the Base Bid plus all add Alternates, and a failure to provide an amount equal to or greater than ten (10) percent of the total of the Base Bid plus all add Alternates that are accepted shall make the Bid non-responsive. Any letter of credit shall be revocable only by the Owner. Successful Bidders that provide a Bid Guaranty in the form of a certified check, cashier's check or letter of credit under Section 4.2.1(ii) and this subsection 4.2.1.2 shall, at the time of signing the Contract, provide a performance and payment bond meeting the requirements of Ohio Revised Code Sections 153.54(C) and 153.57.

4.2.1.3 A bond must be issued by a surety capable of demonstrating a record of competent underwriting, efficient management, adequate reserves, and sound investments. These criteria will be met if the surety currently has an A.M. Best Company Rating of "A-" or higher. A bond must be signed by an authorized agent of an acceptable surety bonding company and by the Bidder. The bond must be issued by a surety company authorized by the Ohio Department of Insurance to transact business in the State of Ohio and a copy of that insurance company's certificate of compliance should be attached to the bond. Each bond shall also be supported by a power of attorney for the agent signing for the surety.

4.2.2 FORFEITURE

4.2.2.1 If for any reason, other than as authorized by Sections 4.4 and 4.5 herein, the Bidder fails to execute the Contract, and the Owner awards the Contract to another subsequent Bidder which the Owner determines is the lowest responsive and responsible Bidder, the Bidder who failed to enter into a Contract shall be liable to the Owner for the difference between such Bidder's Bid amount and the Bid amount of the subsequent Bidder awarded the Contract, but not to exceed ten (10) percent of the Bid amount of the Bidder who failed to enter into a Contract. For purposes of this Section 4.2.2, the Bid amount shall mean the Base Bid and Alternates selected by the Owner.

4.2.2.2 If the subsequent Bidder also fails or refuses to execute the Contract, the liability of such subsequent Bidder shall be the amount of the difference between the Bid amount of such Subsequent Bidder and the Bid amount of another subsequent Bidder which the Owner determines is the lowest responsive and responsible Bidder, but not in excess of ten (10) percent of the Bid amount of the subsequent Bidder who failed to enter into a Contract. Liability on account of an award to each succeeding lowest responsible Bidder shall be determined in like manner.

4.2.2.3 If the Owner does not award the Contract to another Bidder which the Owner determines is the next lowest responsible Bidder, but resubmits the Project for bidding, the Bidder failing to execute the Contract shall be liable to the Owner for the costs in connection with the resubmission, of printing new Bidding Documents, required advertising and printing and mailing notices to prospective Bidders, but not to exceed ten percent (10%) of such Bidder's Bid amount.

4.3 SUBMISSION OF BIDS

4.3.1 The Bid, the Bid Guaranty and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

4.3.2 Bids shall be delivered to the designated location not later than the time and date for receipt of Bids. The cancellation or delay of the normal business activities of the Owner shall not be construed as an extension of the time and date for the receipt and opening of Bids. Bids received after the time and date for receipt of Bids will be returned unopened regardless of the reason for the delay.

4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids, regardless of the method of delivery. Ample time should be allowed for transmittal of Bids by mail or otherwise. Bidders should secure correct information relative to the probable time of arrival and distribution of mail at the place where Bids are to be opened.

4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted Bids will not be considered.

4.3.5 Form of Bid

4.3.5.1 Bids shall not contain a recapitulation of the Work to be done.

4.3.5.2 Before submitting a Bid, Bidders should carefully examine all of the Bidding Documents, visit the site and fully inform themselves as to all existing conditions and limitations that may affect the Work, including prevailing climate conditions and when the Work will be performed. Each Contractor shall be responsible for its portion of the Work regardless of what Drawing it may appear on or Specification division it is described in.

4.4 MODIFICATION OR WITHDRAWAL OF BID PRIOR TO BID OPENING

4.4.1 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A modification to the Bid amount shall be worded as not to reveal the amount of the original Bid, and changes shall provide an amount to be added to or subtracted from the Bid amount so that the final Bid amount can be determined only after the sealed envelope is opened.

Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders. The Bid Guaranty shall be in an amount sufficient for the Bid as resubmitted.

4.5 WITHDRAWAL OF BID AFTER BID OPENING

4.5.1 Following the Bid opening, withdrawal of Bids shall be governed by Ohio Revised Code Section 9.31.

4.5.2 A Bidder may withdraw a Bid from consideration after the Bid opening if the Bid amount was substantially lower than the amounts of other Bids, providing the Bid was submitted in good faith, and the reason for the Bid amount being substantially lower was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of Work, labor, or material made directly in the compilation of the Bid amount.

4.5.2.1 Notice of a request to withdraw a Bid shall be made in writing filed with the Owner within two (2) business days after the conclusion of the bid opening. The Owner reserves the right to request the Bidder to submit evidence substantiating the Bidder's request to withdraw the Bid.

4.5.2.2 No Bid may be withdrawn under Section 4.5.2 which would result in awarding a Contract involving the same item on another Bid to the same Bidder.

4.5.3 If a Bidder withdraws its Bid under Section 4.5.2, the Owner may award the Contract to the next lowest responsive and responsible Bidder, or reject all Bids and rebid the Project. In the event the Owner rebids the Project, the withdrawing Bidder shall pay the costs, in connection with the re-bidding, of printing new Bidding Documents, required advertising, and printing and mailing of notices to prospective Bidders, if the Owner finds that these costs would not have been incurred but for the withdrawal.

4.5.4 If the Owner contests the right of a Bidder to withdraw a Bid pursuant to Section 4.5.2, it shall hold a hearing within ten (10) days after the Bid opening and the Owner shall issue an order allowing or denying the claim of this right within five (5) days after the hearing is concluded. The Owner shall give the withdrawing Bidder timely notice of the time and place of the hearing. The Owner shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing, and the Bidder shall pay the costs of the hearing. Pursuant to Ohio Revised Code Section 119.12, the Bidder may appeal the order of the Owner.

4.5.5 In the event the Owner denies the request for withdrawal and the Bidder elects to appeal or otherwise refuses to perform the Contract, the Owner may reject all Bids or award the Contract to the next lowest responsive and responsible Bidder.

4.5.6 A Bidder who is permitted to withdraw a Bid under Section 4.5.2 shall not supply material or labor to, or perform a subcontract or other work for, the person to whom the Contract is awarded, or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn Bid was submitted, without the Owner's prior written consent. The person to whom the Contract was awarded and the withdrawing Bidder are jointly liable to the Owner in an amount equal to any compensation paid to or for the benefit of the withdrawing Bidder without such approval, in addition to the penalty provided for in Ohio Revised Code Section 2913.31.

4.5.7 A request for a withdrawal of a Bid that is made more than two business days after the conclusion of the Bid opening shall be subject to Section 4.2.2 herein.

ARTICLE 5. CONSIDERATION OF BIDS

5.1 OPENING OF BIDS

5.1.1 Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders. Bids will be recorded showing the date and time received. Bids received prior to the time of opening will be securely kept, unopened. No responsibility will be accepted for the premature opening of a Bid not properly addressed and identified.

5.1.2 The public opening and reading of Bids is for informational purposes only and is not to be construed as an acceptance or rejection of any Bid submitted.

5.1.3 The contents of the Bid envelope shall be a public record and open for inspection, upon request, at any time after the completion of the entire Bid opening, except for any information that is not a public record under Ohio law.

5.1.4 All Bids shall remain open for acceptance for sixty (60) days following the day of the Bid opening, but the Owner may, in its sole discretion, release any Bid and return the Bid Guaranty prior to that date.

5.2 BID EVALUATION

5.2.1 The Owner shall have the right in its sole discretion to reject any or all Bids and submit the Project or any components thereof for rebidding. A Bid not accompanied by a required Bid Guaranty or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

5.2.2 The Owner will have the right to take such steps as it deems necessary to determine the responsibility of the Bidder and the ability of the Bidder to perform the Work, and the Bidder shall furnish the Owner such data for this purpose as Owner may request. Such data may include but not be limited to:

5.2.2.1 Overall experience of the Bidder, including number of years in business under present and former business names. If the Bidder's management operates or has operated another construction company, the Owner may consider the work history of that company in determining the overall experience of the Bidder;

5.2.2.2 Complete listing of all ongoing and completed public and private construction projects of the Bidder in the last three years, including the nature and value of each contract and a name/address/phone number for each owner;

5.2.2.3 Complete listing of any public or private construction projects for which the Bidder has been declared in default; also, any EPA, OSHA or other regulating entity issues or citations in the last ten (10) years;

5.2.2.4 Certified financial statement, bank references, and information concerning Bidder as reported by Dun & Bradstreet and other similar reporting services which is not a public record under Ohio Revised Code 149.43;

5.2.2.5 Description of relevant equipment and facilities of the Bidder;

5.2.2.6 Description of the management experience of the Bidder's project manager(s) and superintendent(s);

5.2.2.7 Complete list of Subcontractors which the Bidder proposes to employ on the Project;

5.2.2.8 Current Ohio Workers' Compensation Certificate;

5.2.2.9 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Secretary of State showing the right of the Bidder to do business in the State; or, if the Bidder is a person or partnership, the Bidder has filed with the Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action;

5.2.2.10 Any prior rejections of a Bid submitted by the Bidder on a public project.

5.2.3 Failure to timely submit the requested information may be grounds for rejecting the Bid.

5.2.4 The right is reserved to reject Bids where an investigation of the available evidence or information does not satisfy the Owner that the Bidder is a responsible Bidder.

5.2.5 Bids which contain qualifications or conditions that are contrary to the text or intent of the Bidding Documents, and which are inserted in the Bid or submitted subsequent to the Bid opening for the purpose of limiting or otherwise qualifying the obligations of the Bidder, outside of the text or intent of the Bidding Documents, may be subject to disqualification.

5.2.6 The Owner reserves the right to reject the Bid of a Bidder who has previously failed to perform properly or to complete Contracts of a similar nature on time, who is not in a position to perform the Contract, or who has habitually, and without just cause neglected the payment of bills or otherwise disregarded its obligations to subcontractors, material persons, or employees.

5.2.7 The Owner reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure, a minor irregularity or technical deficiency in a Bid, provided the irregularity or deficiency does not affect the Bid amount or otherwise give the Bidder a competitive advantage.

5.2.8 The Bidder authorizes the Owner and its representatives to contact the owners and professionals (including but not limited to architects, engineers and construction managers) on projects on which the Bidder has worked. Bidder shall provide the full contact information for such owners and professionals, and Bidder authorizes such owners and

professionals to provide the Owner with a candid evaluation of the Bidder's performance. By submitting its Bid, the Bidder agrees that if it or any person, directly or indirectly, on its behalf or for its benefit brings an action against any of such owners or professional or the employees of any of them as a result of or related to such candid evaluation, the Bidder will indemnify and hold harmless such owners and professionals and the employees of any of them from any claims whether or not proven that are part of or are related to such action and from all legal fees and expenses incurred by any of them arising out of or related to such legal action. This obligation is expressly intended for the benefit of such owners and professionals, and the employees of each of them.

5.3 ACCEPTANCE OF BID (AWARD)

5.3.1 Subject to the right of the Owner to reject each and every Bid, the Owner will award the Contract for the Work to the lowest responsible Bidder. In determining which Bid is the lowest responsible Bid, the Owner may take into consideration not only the amount of the Base Bid and the Bids for any Alternate the Owner determines to accept but such of the following criteria as Owner, in its discretion, deems appropriate, and Owner may give such weight thereto as it deems appropriate:

5.3.1.1 The Bidder's financial condition and ability to complete the Contract successfully without resort to its surety;

5.3.1.2 The Bidder's prior experience, including experience with similar work on comparable or more complex projects;

5.3.1.3 The management skills of the Bidder, including the competency and experience of the Bidder's proposed supervisory and management staff and the capability of the Bidder to construct and manage the entire Project, including but not limited to the plumbing, fire protection, heating, ventilating and air conditioning and electrical branches or classes of the Work;

5.3.1.4 The Bidder's prior history for the successful and timely completion of projects;

5.3.1.5 The Bidder's equipment and facilities;

5.3.1.6 The adequacy, in numbers and experience, of the Bidder's work force to complete the Contract successfully and on time;

5.3.1.7 The Bidder's prior experience on other projects of the Owner, including the Bidder's demonstrated ability to complete its work on these projects in accordance with the Bidding Documents and on time;

5.3.1.8 The Bidder's history of compliance with federal, state, and local laws, rules, and regulations.

5.3.1.9 A Bidder who submits a Bid for Work as a mechanical contractor or which includes mechanical contracting (i.e., electrical, plumbing, hydronics, refrigeration or

heating, ventilating and air conditioning) may be required to submit evidence of licensure of the Bidder or applicable Subcontractor by the Ohio Construction Industry Licensing Board;

5.3.1.10 The Owner's prior experience with the Bidder's surety;

5.3.1.11 The Bidder's interest in the Project as evidenced by its attendance at any pre-bid meetings or conferences for Bidder;

5.3.1.12 The Bidder's ability to work with the Owner and other Project personnel as a willing, cooperative and successful team member;

5.3.1.13 The Bidder shall certify it has not had a professional license revoked in the past five years in Ohio or in any other state;

5.3.1.14 The Bidder shall certify it has not been debarred from any public contract, federal, state or local, in the past five years;

5.3.1.15 Other essential factors as deemed appropriate by the Owner;

5.3.1.16 The foregoing information with respect to each of the subcontractors and suppliers that the Bidder intends to use on the Project.

ARTICLE 6. POST-BID INFORMATION

6.1 CONTRACTOR'S QUALIFICATION STATEMENT

Bidders to whom award of a Contract is under consideration shall submit to the Owner as promptly as possible, but no later than 48 business hours after Bid opening, a statement of the Bidder's qualifications. Unless a qualifications form is contained in the Project manual, Bidder shall use the AIA A305 form. Bidder shall thereafter promptly provide to the Owner not later than 24 business hours after request such additional information as the Owner may reasonably request regarding the Bidder's responsibility.

6.2 SUBMITTALS

6.2.1 The Bidder shall within 48 hours after Bid opening, or such longer time as may be permitted by Owner, furnish to the Owner in writing the following information. Failure to submit this information within the required time may be grounds for rejection of the Bid:

- .1 a designation of the Work to be performed with the Bidder's own forces;
- .2 names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work;
- .3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work;
- .4 the list of all proposed Subcontractors and suppliers; and

- .5 the breakdown of the labor and material for the Project, including the sum thereof.

6.2.2 The Bidder will be required to establish to the satisfaction of the Owner the reliability and responsibility of the persons or entities proposed to furnish materials and perform the Work described in the Bidding Documents.

6.2.3 Prior to the execution of the Contract, the Owner will notify the Bidder in writing if, after due investigation, the Owner has reasonable objection to a person or entity proposed by the Bidder. If the Owner has reasonable objection to a proposed person or entity, the Bidder shall submit an acceptable substitute person or entity at no additional cost to Owner.

6.2.4 Persons and entities proposed by the Bidder and to whom the Owner has made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner.

6.3 NOTICE OF INTENT TO AWARD

6.3.1 The Owner shall notify the apparent successful Bidder of the Owner's intent to award the Bid of the Bidder upon satisfactory compliance by Bidder with the conditions specified in Section 8.4 herein. The Owner reserves the right in its sole discretion to rescind the notice at any time. The failure to submit requested information on a timely basis may result in the determination that the Bidder is not the lowest responsible Bidder.

6.3.2 It is understood that issuance of the notice by the Owner does not constitute the formation of a Contract between Owner and Bidder, and it is further understood that acceptance by the Owner's governing body of the Bidder's Bid and the execution of a formal written Agreement by both the Owner and Bidder, which Agreement must contain a fiscal officer certificate as required by statute, are conditions to the formation of a Contract.

ARTICLE 7. FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on the Form of Agreement Between Owner and Contractor as contained in the Bidding Documents.

ARTICLE 8. SUPPLEMENTAL BIDDING INFORMATION

8.1 Communications for the administration of the Contract shall be as set forth in the Contract and, in general, shall be through the Owner.

8.2 If the Owner and a Bidder enter into a contract within 60 days of the Bid opening, the Contractor shall pay any and all material, labor or Subcontract cost increases which have occurred since the Bid opening. Contracts entered into beyond the 60-day period may contain additional amounts for cost increases if the cause for delay is not the fault of the Contractor.

8.3 By submitting a Bid, the Bidder represents that the Bidder is not subject to a finding for recovery under Ohio Revised Code Section 9.24, or that Bidder has taken the appropriate

remedial steps required under Ohio Revised Code Section 9.24, or otherwise qualifies under this section.

8.4 Prior to the signing of a Contract, the successful Bidder shall furnish (i) certificates of insurance meeting the requirement of the Contract, (ii) performance and payment bond (if required by, and not already provided in accordance with, Section 4.2 herein), (iii) Ohio workers' compensation certificates, (iv) Ohio Secretary of State certification, (v) tax affidavit (Ohio Revised Code Section 5719.042), (vi) contractor consent to escrow agent/agreement or waiver of escrow, and (vii) Proof of enrollment in good standing in the Ohio Bureau of Workers' Compensation ("BWC") Drug-Free Workplace Program ("DFWP") or an equivalent BWC approved DFWP in accordance with Ohio Revised Code Sections 153.03 to 153.031.

8.4.1 The award of the Contract and the execution of the Contract are based upon the expectation that the lowest responsible Bidder will comply with the conditions of Section 8.4.

8.4.2 Noncompliance with the conditions within five (5) days of the date that the Bidder is notified of the notice of intent to award the Contract in accordance with Section 6.3 herein shall be cause for the Owner to cancel the award for the Bidder's lack of responsibility and award the Contract to another Bidder which the Owner determines is the next lowest responsive and responsible Bidder, or resubmit the Contract for bidding, at the discretion of the Owner.

8.4.3 The Owner may extend the time for compliance with the conditions for good cause shown. No extension shall operate as a waiver of the conditions precedent for execution of the Contract.

BID FORM

Project: West Holmes Local School District, Field House Roof

The undersigned, having read and examined the premises and the Contract Documents, including without limitation the Drawings and Specifications, prepared for the above-referenced Project, and the following Addenda:

Addendum Number	Date of Receipt
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

submits its Bid for the Project.

The Contractor acknowledges that all Work shall be completed within the time established in the Contract Documents, and that each applicable portion of the Work shall be completed upon the respective milestone completion dates, unless an extension of time is granted in accordance with the Contract Documents.

The undersigned Bidder proposes to perform all Work for the applicable Contract, in accordance with the Contract Documents, for the following sums:

ITEM 1. BASE BID:

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____

BIDDER'S CERTIFICATION

The Bidder hereby acknowledges that the following representations in this Bid are material and not mere recitals:

1. Bidder has read and understands the Contract Documents and agrees to comply with all requirements of the Contract Documents, regardless of whether the Bidder has actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.
2. The Bidder represents that the Bid is based upon the standards specified by the Contract Documents.

3. The Bidder has visited the Project site, become familiar with local conditions and has correlated personal observations about the requirements of the Contract Documents. The Bidder has no outstanding questions regarding the interpretation of the Contract Documents.
4. The Bidder understands that the award of separate contracts for the Project will require sequential, coordinated and interrelated operations which may involve interference, disruption, hindrance or delay in the progress of the Bidder's Work. The Bidder agrees that the Contract price, as amended from time to time by Change Order, shall cover all amounts due from the Owner resulting from interference, disruption, hindrance or delay caused by or between Contractors or their agents and employees. The Bidder agrees that any such interference, disruption, hindrance or delay is within the contemplation of the Bidder and the Owner and that the Contractor's sole remedy for such interference, disruption, hindrance or delay shall be an extension of time in accordance with the Contract Documents. This provision is intended to be, and shall be construed as, consistent with and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.
5. The Bidder and each person signing on behalf of the Bidder certifies, and in the case of a joint or combined Bid, each party thereto certifies as to such party's organization, under penalty of perjury, that to the best of the undersigned's knowledge and belief: (a) the Base Bid, any Unit Prices and any Alternate Bid in the Bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such Base Bid, Unit Prices or Alternate Bid with any other Bidder; (b) unless otherwise required by law, the Base Bid, any Unit Prices and any Alternate Bid in the Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the Bid opening, directly or indirectly, to any other Bidder who would have any interest in the Base Bid, Unit Prices or Alternate Bid; (c) no attempt has been made or will be made by the Bidder to induce any other individual, partnership or corporation to submit or not to submit a Bid for the purpose of restricting competition.
6. Bidder will enter into and execute the Agreement with the Owner, if a Contract is awarded on the basis of this Bid, and if the Bidder does not execute an Agreement for any reason, other than as authorized by law, the Bidder and the Bidder's Surety are liable to the Owner as provided in the Ohio Revised Code and as applicable to the Owner.
7. Bidder certifies that the upon the award of a Contract, it will make a good faith effort to ensure that all of its employees, while working on the site of the Project, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
8. Bidder agrees to furnish any information requested by the Owner to evaluate the responsibility of the Bidder.
9. The Bidder certifies that upon the execution of the Contract, the Contractor shall be enrolled in good standing in the Ohio Bureau of Workers' Compensation Drug-Free Workplace Program (DFWP) or an equivalent BWC approved DFWP throughout the entire Project, in accordance with Ohio Revised Code Sections 153.03 to 153.031. The Bidder acknowledges the responsibility to require all Subcontractors to be enrolled in good standing in the Ohio Bureau of Workers' Compensation DFWP or comparable Bureau of Workers' Compensation approved program that meets the requirements specified in Ohio Revised Code Sections 153.03 to 153.031, prior to the Subcontractor providing labor at the Project site.

Each Bid shall contain the name of every person interested therein. If the Bidder is a corporation, partnership or sole proprietorship, an officer, partner or principal of the Bidder, as applicable, shall print

or type the legal name of the Bidder on the line provided and **sign the Bid Form**. If the Bidder is a joint venture, an officer, partner or principal, as applicable, of each member of the joint venture shall print or type the legal name of the applicable member on the line provided and sign the Bid Form.

BIDDER'S NAME:

Authorized Signature: _____

Print Name: _____

Title: _____

Company Name: _____

Mailing Address: _____

Telephone Number: (____) _____

Facsimile Number: (____) _____

Where Incorporated: _____

Federal ID Number: _____

Contact person for
Contract processing: _____

E-mail of Contact

Person: _____

OWNER-CONTRACTOR AGREEMENT

Owner:

**Board of Education of the West
Holmes Local School District
28 W. Jackson Street
Millersburg, Ohio 44654**

Contract and Project: Field House Roof

Contractor:

Address:

Phone:

E-mail:

Date:

The Owner and the Contractor hereby enter into this Owner-Contractor Agreement ("Agreement") as of the date set forth above. The Owner and the Contractor agree as follows:

1. WORK.

1.1 The Contractor will furnish all the labor, services, materials, plant, equipment, tools, scaffolds, appliances, tests, inspections, fees, permits and all other things necessary and inferable (collectively called the "Work") for the timely and proper completion of the Work described in the Contract Documents described herein. The Contractor shall be responsible for the means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs, including OSHA regulations, in connection with the Work.

1.2 The Contractor must at all times furnish sufficient skilled workers, materials, and equipment to perform the Work in strict conformance with the Contract Documents and to the satisfaction of the Owner, so as to complete the Project by the date for Substantial Completion.

1.3 The Contractor will assign a competent Project supervisor. At the Owner's request, the Contractor will replace the Project supervisor, provided that the request is reasonable. The Owner's Representative will not be responsible for the acts or omissions of the Contractor's supervisor or its assistants.

1.4 The Contractor shall be responsible for the disposal of debris and waste materials and leaving the Project site in a clean and sanitary condition. Contractor shall provide its own waste disposal receptacles and shall not use any dumpsters or receptacles of the Owner.

1.5 The Contractor shall provide for the safe storage and protection of materials and equipment at all times.

1.6 Upon final completion of the Work, the Contractor shall provide as-built drawings to the Owner depicting the Work as constructed.

1.7 The Contractor shall promptly review, approve in writing, and submit to the Owner shop drawings, product data, samples, and similar submittals as necessary for the Work. Shop drawings, product data, samples, and similar submittals are not Contract Documents. The Owner will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the concept expressed in the Contract Documents.

2. CONTRACT DOCUMENTS.

2.1 The "Contract Documents" consist of this Owner-Contractor Agreement, the project manual dated _____, 2023 (which includes the "Bidding Documents" defined in the Instructions to Bidders contained in the project manual) and modifications issued after the date of this Agreement (such as change directives and/or Change Orders), all of which are incorporated into this Agreement. In the event of a conflict among this Agreement and any of the other Contract Documents that are not resolved by a modification, the conflict shall be resolved by the Contractor adhering to the stricter requirement.

2.2 The Owner alone owns all Project-related documents, including those in electronic form, prepared by the Contractor and subcontractors, and every right, title, and interest therein from the moment of creation. The Contractor must execute and deliver and cause its employees and agents and all subcontractors to execute and deliver to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of the Contractor's documents. The Contractor may retain copies, including reproducible copies, of the Contractor's documents for information, reference, and performance of the Work. The submission or distribution of the Contractor's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the Contractor's documents. Any unauthorized use of the Contractor's documents shall be at the sole risk of the entity making the unauthorized use.

3. CONTRACT SUM.

3.1 **CONTRACT SUM.** The contract sum ("Contract Sum") to be paid by the Owner to the Contractor, as provided herein, for the satisfactory performance and completion of the Project and all of the duties, obligations and responsibilities of the Contractor under this Agreement and the other Contract Documents is _____ **Dollars (\$_____)** [Base Bid: \$_____; Alternate: \$_____]. The Contract Sum includes all federal, state, county, municipal, and other taxes imposed by law, including but not limited to any sales, use, and personal property taxes payable by or levied against the Contractor on account of the Work or the materials incorporated into the Work. The Contractor is responsible to pay any such taxes. The Contract Sum also includes the cost of any permits required for the Work.

3.2 **ALLOWANCES.** The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance. Unused allowance shall be credited to the Owner by Change Order.

4. REPRESENTATIVES.

4.1 _____, is the "Owner's Representative" with respect to all matters involving the Project.

4.2 _____, is the "Contractor's Representative" with respect to all matters involving the Agreement and Project

4.3 Except as specifically stated to the contrary elsewhere in this Agreement, the parties will direct all communications to the other through their Representatives.

4.4 The Contractor at all times will provide the Owner's Representative access to the Work.

5. TIME FOR COMPLETION AND PROJECT COORDINATION.

5.1 PROJECT TIME SCHEDULE.

5.1.1 **SUBSTANTIAL COMPLETION.** Contractor shall commence the Work as of the date of this Agreement and shall attain substantial completion of the Work by not later than September 29, 2023 unless the Owner and Contractor agree to a different substantial completion date ("Substantial Completion"). For purposes of this Agreement, "Substantial Completion" means that the Work is complete in accordance with the Contract Documents so that the Owner may utilize the Work for its intended purpose, subject to completion of minor punchlist items. "Punchlist items" are items to be completed or corrected prior to final payment that will not interfere with or hinder the Owner's use of the Project.

5.1.2 **FINAL COMPLETION.** Contractor shall attain final completion of the Work not later than twenty-one (21) days after attainment of Substantial Completion. Final completion shall mean that the Work is fully and satisfactorily complete, including punchlist items, in accordance with the Contract Documents.

5.2 **TIME IS OF THE ESSENCE.** THE DATES IN THE PROJECT TIME SCHEDULE ARE OF THE ESSENCE OF THIS AGREEMENT. THE CONTRACTOR WILL PROSECUTE ITS WORK IN ACCORDANCE WITH THE PROJECT TIME SCHEDULE, INCLUDING ANY AMENDMENTS THERETO.

5.3 DELAYS AND ACCELERATIONS.

5.3.1 **NOTICE OF DELAYS.** The Contractor will give the Owner written notice of any delay affecting its prosecution of the Work within seven (7) days of the commencement of the delay. The failure to give the required notice constitutes an irrevocable waiver of the Contractor's right to seek an extension of time and/or additional compensation/damages for the delay. The Owner will determine whether a delay entitles the Contractor to an extension of time. If the Contractor disputes the Owner's determination, then Contractor may submit a Claim pursuant to Article 10 herein. Any extensions of time will only be granted pursuant to the procedures for Change Orders set forth in this Agreement.

5.4 **PROGRESS REPORTS.** The Contractor shall provide weekly progress reports which shall include activities begun or finished during the preceding week, expected completion of activities in progress, activities to be started or finished in the upcoming two weeks, recommendations for adjusting the construction schedule to meet milestone completion, Substantial Completion and final completion dates, and other information requested by Owner.

5.5 **LIQUIDATED DAMAGES.** If the Contractor shall fail, neglect, and/or refuse to attain Substantial Completion of the Work by the date set forth in this Agreement or applicable milestone completion date, Contractor shall be subject to liquidated damages (not a penalty) at the rate of \$500.00 per calendar day. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work and shall be in addition to any other remedies available to the Owner. The Owner may deduct liquidated damages from any unpaid amounts then or thereafter due Contractor. Any liquidated damages not so deducted shall be payable by the Contractor to the Owner upon demand. Liquidated damages are not intended to compensate the Owner for any damages the Owner incurs on account of any claims attributable to the Contractor that are brought by others, including separate contractors.

6. CORRECTIVE ACTION. If the Owner determines that the Contractor is not cooperating or coordinating its Work properly with its subcontractors, not supplying sufficient skilled workers, not cleaning up the Project, not furnishing the necessary materials, equipment, or any temporary services or facilities to perform the Work in strict conformance with the Contract Documents, or the Contractor is not on schedule, or is not otherwise performing its obligations under the Contract Documents, THE CONTRACTOR MUST IMMEDIATELY, AND IN NOT LESS THAN FORTY-EIGHT (48) HOURS AFTER NOTICE OF SUCH DETERMINATION, OR SUCH LESSER TIME AS MAY BE PROVIDED IN THE CONTRACT DOCUMENTS, (1) COMMENCE SUCH ACTION AS IS NECESSARY TO CORRECT THE DEFICIENCIES NOTED BY THE OWNER, (2) PROCEED TO USE ITS BEST EFFORTS TO CORRECT SUCH DEFICIENCIES WITHIN FOURTEEN (14) DAYS OF SUCH NOTICE AND/OR, (3) IF THE OWNER INSTRUCTS THE CONTRACTOR TO TAKE SPECIFIED CORRECTIVE ACTION, MUST IMMEDIATELY TAKE SUCH CORRECTIVE ACTION, including but not limited to increasing the number of skilled workers, providing temporary services or facilities, and cleaning up the Project. Such corrective action will be taken and continued uninterruptedly without waiting to initiate any dispute under Article 10 of this Agreement or the resolution of any dispute initiated under such Article.

7. LIMITATION AND LIABILITY. The Owner's total liability under this Agreement is limited to the Contract Sum unless the parties agree in writing to additional amounts under a Change Order. Under no circumstances will the elected officials, officers, employees, board members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

8. PAYMENT.

8.1 PAYMENT.

8.1.1 APPLICATIONS FOR PAYMENT. Payment applications will be submitted on a monthly basis and will reflect the amount of Work completed as of the date the application for payment is submitted. On or before the date of the month specified by the Owner, the Contractor will submit to the Owner, an itemized payment application for such period. Each payment application shall be accompanied by conditional lien waivers and releases from all subcontractors and suppliers to be paid from the payment resulting from the payment application, unconditional lien waivers and releases from all subcontractors and suppliers for which Contractor was required to provide a conditional lien waiver in connection with a prior payment application, and such other data substantiating the Contractor's right to payment that the Owner may require, such as copies of requisitions. Each payment application shall be based on the most recent schedule of values submitted by the Contractor. The schedule of values shall allocate the entire Contract Sum to the various portions of the Work.

8.1.2 The Owner may withhold payment in whole or in part, and may nullify any previous payments and demand that the Contractor refund amounts previously paid, to protect the Owner from loss because of:

- (a) The Contractor's default or failure to perform any of its obligations under the Contract Documents, including but not limited to failure to provide sufficient skilled workers; Work, including equipment or materials, which is defective or otherwise does not conform to the Contract Documents; failure to conform to the Project time schedule; and failure to follow the directions of or instructions from the Owner;
- (b) The Work has not proceeded to the extent set forth in the application for payment;
- (c) Any representations made by the Contractor are untrue;
- (d) The failure of the Contractor to make payments to its subcontractors;
- (e) Damage to the Owner's property or the property of another person or laborer;
- (f) The determination by Owner that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (g) Contractor's indemnity obligations; or
- (h) Liens filed or attested account claims received by subcontractor.

8.1.3 The Owner will pay the Contractor within thirty (30) days after approval of the Contractor's payment application, provided that the payment application has been properly submitted on a timely basis and is accompanied by all of the required documentation. The Owner may establish a cut-off date for the submission of the payment application.

8.2 RETAINAGE. Retainage applicable to the Contract by Ohio Revised Code Sections 153.12, .13, and .14 will be withheld as required by law. The Contractor agrees that the Owner may deposit funds into an interest-bearing savings account or otherwise track the retained funds, with accrued interest, after the contract is 50% complete, and that this deposit is acceptable to the Contractor in lieu of establishing a separate interest-bearing savings account for the deposit of the retained funds. Contractor further agrees that it will execute any documentation requested by Owner related to the manner in which retained funds are held or deposited for the Contractor.

8.3 FINAL PAYMENT. Following the final completion of the Work, Contractor shall submit a final payment application for the unpaid balance of the Contract Sum and retainage, which shall be due and payable within thirty (30) days following approval of the payment application. At the time of submission of its final payment application, Contractor shall provide the following: (1) operating manuals, warranties, as-built drawings and specifications showing Work as actually performed, variations from the original Contract Documents and the location of any concealed and/or buried items, utilities, mechanical or electrical systems and components, and other deliverables required by the Contract Documents, and (2) such other reasonable and customary documents as necessary for Owner to obtain the required title to the Project, including final lien waivers from the Contractor and its subcontractors and suppliers of any tier. In making final payment the Owner waives all claims except for: (i) improper workmanship or defective materials and failure of the Work to comply with the Contract Documents; (ii) terms of any special warranties required by the Contract Documents; (iii) Contractor indemnity obligations; and (iv) liens, security interests or encumbrances arising out of the Agreement and unsettled. In accepting final payment, the Contractor waives all claims except those previously made in writing and which remain unsettled.

9. CHANGE ORDERS/CHANGE DIRECTIVES.

9.1 Change Order. A Change Order is a written instrument signed by the Owner and the Contractor stating their agreement upon a change in the Work, the amount of the adjustment or the method for computing the amount of the adjustment of the Contract Sum, if any, and the extent of the adjustment in the Project time schedule, if any. Any Work that is beyond the scope of the Work specified for the Project or that modifies the Work specified for the Project must be approved through a written Change Order signed by the parties evidencing their agreement.

9.2 Change Directives. Notwithstanding any provision in Section 9.1 to the contrary, the Owner may, without invalidating the Agreement, issue to Contractor a construction change directive directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, contract time, or both. Upon receipt of a construction change directive, the Contractor shall promptly proceed with the change in the Work involved. The Contractor shall submit promptly to the Owner a claim for adjustment to the Contract Sum and contract time for such revised Work in a manner consistent with requirements of the Agreement provided that Contractor's claim for overhead and profit shall not exceed ten percent. Contractor's cost breakdown for such claim shall be submitted to Owner in a form reasonably satisfactory to Owner.

10. CLAIMS.

10.1 A Claim is a demand or assertion by the Contractor seeking, as a matter of right, adjustment, or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the terms of the Contract Documents, provided that the Owner's decision to adjust or withhold payment under Section 8.1.2 will not be considered a Claim. The responsibility to substantiate Claims rests with the Contractor. This Article 10 does not require the Owner to make a claim against the Contractor in order for the Owner to exercise its rights and remedies against the Contractor, including but not limited to the imposition of liquidated damages in accordance with the Contract Documents.

10.2 Claims must be made by written notice.

10.3 If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein must be given before proceeding to execute the Work.

10.4 If the Contractor wishes to make a Claim for additional time, the Contractor must include an estimate of cost and probable effect of delay on progress of the Work. In the event of continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

10.5 The Contractor must make all Claims in writing within seven (7) days after the occurrence of the event giving rise to the Claim. Failure to do so is an irrevocable waiver of the Claim.

10.6 The Contractor, within ten (10) days following a written request from Owner, will make available to the Owner or its representative any books, records, or other documents in its possession or to which it has access relating to any Claim and will require its subcontractors, regardless of tier, and material suppliers, to do likewise.

10.7 If a Claim has not been resolved within thirty (30) days after submission to the Owner, unless agreed otherwise in writing by the parties, the binding dispute resolution method shall be litigation in a court of competent jurisdiction.

10.8 Notwithstanding the foregoing, and subject to other provisions of the Agreement, the Contractor will only be entitled to an extension of the contract time on account of delay in the commencement or progress of Work caused by acts of nature or the public enemy, acts of the government not arising from the Contractor's failure to comply with applicable law, fires, floods, weather, labor disputes and any other type of force majeure event beyond the Contractor's control.

11. DEFAULT OF THE CONTRACTOR.

11.1 EVENTS OF DEFAULT. Each of the following constitutes an event of default of the Contractor:

11.1.1 (A) The Contractor's failure to perform any of its obligations under the Contract Documents and to proceed to commence to correct such failure within forty-eight (48) hours after written notice thereof from the Owner or such lesser time as is provided in the Contract Documents; (B) The Contractor's failure thereafter to use its best efforts to correct such failure; and (C) Except when an extension of time is granted in writing by the Owner, to correct such failure within five (5) days after receipt of written notice thereof; and/or

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

11.2 OWNER'S REMEDIES. Upon the occurrence of an event of default, the Owner will have the following remedies, which are cumulative:

11.2.1 Order the Contractor to stop the Work, which the Contractor will do immediately;

11.2.2 To perform through others all or any part of the Work remaining to be done and to deduct the cost thereof from the unpaid balance of the Contract Sum or, if the unpaid balance of the Contract Sum is inadequate, to demand reimbursement of amounts previously paid to the Contractor;

11.2.3 To terminate this Agreement and take possession of, for the purpose of completing the Work or any part of it, all materials, equipment, scaffolds, tools, appliances, and other items belonging to or possessed by the Contractor, all of which the Contractor hereby transfers and assigns to the Owner for such purpose, and to employ any person or persons to complete the Work, including the Contractor's employees, and the Contractor will not be entitled to receive any further payment until the Work is completed; and/or,

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

11.3 TERMINATION OF AGREEMENT. The termination of this Agreement is without prejudice to the Owner's rights and remedies, including without limitation the Owner's right to be indemnified by the Contractor.

11.4 PAYMENTS DUE CONTRACTOR. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Project, including any costs, expenses or damages incurred by the Owner as a result of the event of default, including attorneys' and consultants' fees and the administrative expense of the Owner's staff, Contractor shall be paid for Work satisfactorily performed. If such costs exceed the unpaid balance, the Contractor will pay the difference to the Owner. The obligations under this Section 11.4 will survive the termination of this Agreement.

12. TERMINATION OR SUSPENSION FOR THE CONVENIENCE OF THE OWNER.

12.1 TERMINATION FOR THE CONVENIENCE OF THE OWNER.

12.1.1 The Owner may, in its discretion and without cause, by written notice to the Contractor terminate this Agreement for the Owner's convenience at any time.

12.1.2 Upon receipt of a written notice from the Owner terminating this Agreement without cause and for the Owner's convenience, the Contractor will (i) immediately cease performing the Work, unless otherwise directed by the Owner, in which case the Contractor will take the action directed by the Owner, (ii) take all reasonable and necessary action to protect and preserve the Work, and (iii) unless otherwise directed by the Owner, terminate all agreements with subcontractors and suppliers.

12.1.3 If this Agreement is terminated without cause and for the Owner's convenience, the Owner will pay the Contractor (i) for Work performed under this Agreement up to the date the notice of termination is received by the Contractor at the rates for Work performed under this Agreement, including overhead and profit for the Work performed up to the date of termination, (ii) for Work performed at the direction of the Owner on and after the date on which the notice of termination is received by the Contractor, as determined by the procedures applicable to Change Orders, (iii) for Work necessary to protect and preserve the Work, as determined by the procedures applicable to Change Orders. Contractor shall not be entitled to overhead and profit on the Work that is terminated.

12.1.4 The termination of this Agreement will be without prejudice to any rights or remedies that exist at the time of termination.

12.2 SUSPENSION FOR THE CONVENIENCE OF THE OWNER.

12.2.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. The Contract Sum and contract time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption. No adjustment shall be made to

the extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible.

13. INSURANCE AND INDEMNIFICATION.

13.1 The Contractor shall, without interruption, maintain all forms of insurance required by law as well as insurance set forth in this Section 13.1 for the duration of this Agreement and for no less than five (5) years after the earlier of the termination of the Agreement or final completion of all Work. All such insurance shall be carried in companies licensed to conduct business in the State of Ohio and rated by "Best" Rating Service of A – VIII or better. The Contractor shall not cancel or allow to expire a policy of insurance without first securing a replacement policy so as to ensure the continuation of coverage. The Contractor's consultants and subcontractors shall similarly maintain such coverage as required by this Section 13.1:

13.1.1 Workers' Compensation Insurance covering the statutory requirements of the State of Ohio.

13.1.2 Employers' Liability with policy limits not less than one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee, and one million dollars (\$1,000,000) policy limit.

13.1.3 Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts: (i) General Aggregate Limit: \$2,000,000 each occurrence; (ii) Each Occurrence Limit: \$2,000,000 each occurrence.

13.1.4 Comprehensive Automobile Liability Insurance, including bodily injury, accidental death and property damage with a combined single limit of not less than One Million Dollars (\$1,000,000) each occurrence.

13.1.5 Excess and/or umbrella liability insurance in excess of the Commercial General Liability Insurance shall be obtained and maintained by the Contractor in the amount of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate annually.

13.1.6 If the Work includes environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, asbestos abatement, storage-tank removal, or similar activities), or involves hazardous materials, the Contractor shall maintain a pollution liability policy with (1) a per-claim limit of not less than \$1,000,000 and (2) an annual-aggregate limit of not less than \$1,000,000.

13.2 Promptly following execution of this Agreement, the Contractor shall provide the Owner with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. Such Certificates shall provide Owner with written notice of cancellation in accordance with the cancellation provisions applicable to each policy. Owner shall be named as an additional insured on the Commercial General Liability, Comprehensive Automobile Liability and Excess Umbrella policies, and Contractor's policies shall be considered as primary to and without right of contribution from any insurance maintained by Owner.

13.3 The Contractor bears the entire risk of loss with respect to tools, equipment, and materials. The Contractor will be responsible for providing property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made. If the property insurance requires minimum deductibles, the Contractor shall pay costs not covered because of such deductibles.

13.4 The Contractor will indemnify, defend and hold harmless the Owner and the Owner's consultants, agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' and consultants' fees, arising out of or related to the performance of the Work, including but not limited to the failure of the Contractor to perform its obligations under the Contract Documents, any claims for bodily injury, sickness, disease, or death or to injury to or destruction of or loss of use of real or personal property, claims for additional storage and handling charges, liens, claims related to the alleged failure of the Contractor to perform in accordance with the Contract Documents, and/or claims related to the removal, handling, or use of any hazardous materials. The Owner may set off amounts equal to any sums for which it is entitled to be indemnified from the amounts otherwise due the Contractor under the Contract Documents.

13.5 Contractor, on behalf of itself and all of its subcontractors, hereby waives all rights of action and subrogation against Owner and the Additional Indemnitees and their officers, agents, and employees.

13.6 In claims against any person or entity indemnified under this Agreement by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations under this Agreement will not be limited by a limitation on amount or type of damages, compensation, or benefits payable for the Contractor or subcontractor under workers' compensation acts, disability benefits acts, or other employee benefits acts. The Contractor expressly waives any protection or immunity with respect to Workers' Compensation claims related to indemnification given under this Agreement.

13.7 The Contractor shall pay all deductibles, or self-insured retentions, or both contained in the Contractor's policies of insurance required or provided in connection with the Project. The Contractor shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Owner purchases for the Project. The Contractor's proportionate share will derive from the percentage of the associated claim or loss attributable to the alleged or actual negligence of the Contractor or a Subcontractor. The Owner does not represent that required coverage or limits are adequate to protect the Contractor.

14. WARRANTIES AND CORRECTION OF WORK.

14.1 Warranties. In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents or applicable as a matter of law and not in limitation of the terms of the Contract Documents, the Contractor warrants that:

(a) Title to all Work covered by a payment application will pass to the Owner no later than the time of payment and that upon submittal of a payment application all Work for which certificates for payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work;

(b) Materials and equipment furnished will be of good quality and new unless the Contract Documents require or permit otherwise; and

(c) The Work will be performed in a good and workmanlike manner, will conform to the requirements of the Contract Documents, and will be free from defects.

14.2 Correction of Work. The Contractor agrees to correct all construction performed under this Agreement which proves to be defective in workmanship, materials or not in accordance with the Contract Documents for a period of one year from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. The obligations of the Contractor under this Section 14.2 are in addition to and not in limitation of any other warranty or obligation of the Contractor under this Agreement.

15. CONCEALED OR UNKNOWN CONDITIONS. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or contract time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Agreement is justified, the Owner shall promptly notify the Contractor, stating the reasons. If Contractor disputes the Owner's determination, the Contractor may submit a Claim as provided in Article 10, and the time limit for initiating a Claim begins to run on the date the Owner issues its determination.

16. SUBCONTRACTORS. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, subcontractors, sub-subcontractors (regardless of tier), suppliers, consultants and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, Contractor, subcontractors, sub-subcontractors (regardless of tier), suppliers, consultants and their agents and employees. The Owner shall be named as a third-party beneficiary under any subcontractor agreement, and the Contractor shall require its subcontractors to name the Owner as a third-party beneficiary under the subcontract agreements. The Contractor hereby assigns, transfers, and conveys to Owner all of Contractor's right, title and interest in and to any subcontract agreement for the Work, which assignment,

transfer and/or conveyance shall become enforceable only upon a termination of this Agreement due to the Contractor's default, and only as to those agreements that Owner accepts such assignment, transfer and/or conveyance of by providing written notification to the Contractor. Any agreements assigned to, and accepted by Owner in accordance herewith may, in turn, be assigned by Owner in its sole discretion, without recourse to any person or entity, in which event such assignee shall assume Owner's rights and obligations under the subcontract agreement (as the case may be).

17. TERMINATION BY CONTRACTOR. The Contractor may terminate this Agreement upon written notice for any of the following reasons: (i) the Owner's failure to pay the Contractor in accordance with this Agreement which has not been cured by Owner within fourteen (14) days of notice from the Contractor of such nonpayment; and (ii) if the Owner otherwise materially breaches this Agreement, and such material breach has not been cured by Owner within thirty (30) days of notice from Contractor of such material breach. Upon termination by the Contractor in accordance with this Article, the Contractor shall be entitled to recover from the Owner payment for all Work executed as of the termination date, but not overhead or profit for unperformed Work.

18. GENERAL.

18.1 MODIFICATION. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Section or as provided in a modification.

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

18.3 THIRD PARTIES. Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of a third party against the Owner.

18.4 LAW AND JURISDICTION. All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligations of the parties will be construed and resolved under the laws of the State of Ohio. The Common Pleas Court for the county in which the Project is located shall have exclusive jurisdiction over any suit which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, except when the U.S. District Court located within the county is determined to have exclusive jurisdiction. The parties waive their right to remove any action filed in a state or local court to federal court.

18.5 STATUTE OF LIMITATIONS. Regardless of any provision to the contrary, the statute of limitations with respect to any defective or non-conforming Work that is not discovered by the Owner will not commence until the discovery of such defective or non-conforming Work by the Owner.

18.6 NOTICES. Notices, requests, or demands by either party must be in writing, unless otherwise expressly authorized, and must be personally served, given by expedited messenger service, given by certified mail (return receipt requested, postage prepaid), or given by e-mail transmission sent to the e-mail address of a party's designated representative (except that a notice of default and Claims given by e-mail must also be given to a party's designated representative in writing via expedited messenger service or certified mail). Any party may change its address by giving notice hereunder. All notices, requests, and demands will be deemed received upon receipt in the case of personal delivery or delivery by expedited messenger service, including leaving the notice at the address provided herein during normal business hours; upon the expiration of forty-eight (48) hours from the time of deposit in the United States mail; or, in the case of a notice given by e-mail transmission, the e-mail notice shall be deemed received when the message enters the recipient's inbox, except that if the message enters the recipient's inbox after 5:00 pm, then it shall be deemed received the next business day.

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

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

18.9 COMPLIANCE WITH LAWS AND REGULATIONS. The Contractor, at its expense, will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work.

18.10 PROJECT SAFETY. The Contractor will be responsible for safety at the Project site and will follow all applicable safety and health regulations during the progress of the Project and will monitor all of its employees and its subcontractors for compliance with such safety and health regulations. The Owner assumes no responsibility for the development, review, or implementation of the any Project safety plan or for Project safety and has no authority to direct the means and methods of the Contractor.

18.11 EQUAL OPPORTUNITY. The Contractor will not, and it will ensure that its subcontractors, regardless of tier, do not discriminate against any employee or applicant for employment because of age, race, color, national origin, sex, gender, gender identity or expression, transgenderism or transsexualism, sexual orientation, citizenship, ancestry, military or veteran status, marital status, family status, pregnancy, genetic characteristics, disability or medical condition. Such action includes but is not limited to the following: employment, upgrading, demotion, transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. The Contractor will ensure that each of its subcontractors, regardless of tier, will state in all solicitations or advertisements for employees placed by them or on their behalf that all qualified applicants will receive consideration for employment without regard to age, race, color, national origin, sex, gender, gender identity or expression, transgenderism or transsexualism, sexual orientation, citizenship, ancestry, military or veteran status, marital status, family status, pregnancy, genetic characteristics, disability or medical condition.

18.12 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

18.13 WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, Contractor shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If Contractor continues to perform, Owner shall continue to make payments in accordance with the Agreement.

18.14 CRIMINAL BACKGROUND CHECKS. Contractor shall perform or cause to be performed an Ohio Bureau of Criminal Investigation and Identification and Federal Bureau of Investigation criminal background check of any person, whether an employee of Contractor or of any Subcontractor, that will perform Work or services or otherwise be present at the Project site and within the proximity of minors. Prior to the performance of any services by such employees, the criminal background check shall be performed and completed at Contractor's sole cost and expense. No person shall be employed on site by Contractor or by any Subcontractor who has been found guilty of any of the criminal offenses enumerated in Ohio Revised Code Section 3319.39 or any equivalent provisions under Federal law or the laws of any of the other states. Contractor shall remove (and shall cause its subcontractor to remove) any person from the Project site found (during the criminal background check or otherwise) to have violated any of the offenses listed in Section 3319.39 of the Ohio Revised Code or equivalent provisions thereof under Federal law or the laws of any of the other states. The foregoing shall not (i) be cause for any claim against the Owner for any reason, including without limitation, interference or delay, and (ii) excuse Contractor or any Subcontractor from meeting the construction schedule.

18.15 EXECUTION OF AGREEMENT. Each party agrees that this Agreement may be electronically signed, and that any electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. This Agreement may also be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart, and signed counterparts of this Agreement may be exchanged through electronic means.

18.16 COMPUTING TIME. When the Contract Documents refer to a period of time by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday. The term "day" as used in the Contract Documents shall mean a calendar day unless otherwise noted.

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

Owner

Contractor

By: _____
(signature)

(printed name and title)

By: _____
(signature)

(printed name and title)

CERTIFICATE
(Section 5705.41, R.C.)

IT IS HEREBY CERTIFIED that moneys required to meet the obligations of the Board of Education under the above Agreement have been lawfully appropriated for such purposes and are in the treasury of the School District or are in the process of collection to an appropriate fund, free from any previous encumbrance. This Certificate is given in compliance with Section 5705.41 of the Ohio Revised Code.

By: _____
Treasurer

Dated: _____, 2023

BID GUARANTY AND CONTRACT BOND

(As prescribed by Section 153.571, ORC)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____

_____ as Principal at

(Address) and _____

as Surety, are hereby held and firmly bound unto the _____

_____ as Oblige in the penal sum of the dollar amount of the bid
submitted by the Principal to the Oblige on (date) _____, 20__ to undertake

the Project known as:

The penal sum, referred to herein, shall be the dollar amount of the Principal's bid to the Oblige, incorporating any additive or deductive alternate bids made by the Principal on the date referred to above to the Oblige, which are accepted by the Oblige. In no case shall the penal sum exceed the amount of \$ _____. (If the penal sum is left blank, the penal sum will be the full amount of the Principal's bid, including alternate bids. Alternatively, if completed, the amount stated must not be less than the full amount of the bid, including add alternate bids, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal has submitted a bid on the above-referenced to Project.

NOW, THEREFORE, if the Oblige accepts the bid of the Principal, and the Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications and bills of

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

IF THE SAID Principal shall well and faithfully perform each and every condition of such contract; and indemnify the Obligee against all damage suffered by failure to perform such contract according to the provisions thereof and in accordance with the plans, details, specifications and bills of material therefor; and shall pay all lawful claims of subcontractors, materialmen and laborers for labor performed and materials furnished in the carrying forward, performing or completing of said contract; we, agreeing and assenting to, that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions or additions, in or to the terms of said contract or in or to the plans and specifications, therefore, shall in any wise affect the obligations of said Surety on its bond, and it does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications. The said Surety further stipulates that it is authorized to execute bonds in the State of Ohio, and that the liability incurred is within the limits of Section 3929.02, ORC.

SIGNED this _____ day of _____, 20__.

PRINCIPAL:

By: _____

Title: _____

SURETY:

Address: _____

Phone: (____) _____

By: _____
Attorney-in-Fact

SURETY AGENT:

Address: _____

Phone: (____) _____

CONTRACTOR'S PERSONAL PROPERTY TAX AFFIDAVIT
(O.R.C. § 5719.042)

State of Ohio

County of _____, ss:

_____ ("Affiant"), being first duly sworn, deposes and says that
(Name)

Affiant is the _____ of _____
(Title) (Name and Address of Contractor)

_____ (the "Contractor") and
as the Contractor's duly authorized representative, states that effective this ____ day of _____, 20____,
the Contractor:

- () is charged with delinquent personal property taxes on the general list of personal property as set forth below:

<u>County</u>	<u>Amount</u> (include total amount penalties and interest thereon)
_____ County	\$ _____
_____ County	\$ _____
_____ County	\$ _____

- () is not charged with delinquent personal property taxes on the general list of personal property in any Ohio county.

(Affiant)

Sworn to or affirmed and subscribed before me by the above-named Affiant on this ____ day of _____, 20____.

Signature of Notary Public – State of Ohio

My commission expires: _____
(date)

BIDDER'S QUALIFICATION STATEMENT

PART 1: General Information

Company Name: _____

Physical Address: _____

Mailing Address: _____

Telephone No. (w/Area Code): _____

Fax No. (w/Area Code): _____

E-Mail Address: _____

PART 2: Overall Experience

Indicate Bidder's overall experience performing the trades bid, including the years in business performing the trade under present and former business names.

PART 3: Financial

The apparent low Bidder shall submit, upon request of the Owner, either:

- a. An annual financial statement prepared within the 12 months prior to the bid opening by an independent licensed accounting firm; and the name, address, contact person and phone number of the bank normally used by the Bidder for its primary banking; or,
- b. A financial report generated within 30 days prior to the bid opening from Standard and Poor, Dun and Bradstreet or a similar company acceptable to the Contracting Authority documenting the financial condition of the Bidder; and the name, address, contact person and phone number of the bank normally used by the Bidder for its primary banking;

This information is not a public record under Ohio Revised Code Section 149.43; and shall remain confidential, except under proper order of a court.

PART 4: Facilities & Equipment

Indicate Bidder's relevant facilities and major equipment (leased or owned).

PART 5: Similar Projects

List five (5) completed projects similar of size and scope of work completed within the past two years, during hours of operation. Include information such as, but not limited to, Project Name & Address, percentage of completion, contact person, and contact's phone number.

Project Name: _____ **Year**
Completed: _____

Project Address: _____

Contact Person: _____ **Contact Phone No.:** _____

Project Name: _____ **Year**
Completed: _____

Project Address: _____

Contact Person: _____ **Contact Phone No.:** _____

Project Name: _____ **Year**
Completed: _____

Project Address: _____

Contact Person: _____ **Contact Phone No.:** _____

Project Name: _____ **Year**
Completed: _____

Project Address: _____

Contact Person: _____ **Contact Phone No.:** _____

Project Name: _____ **Year**
Completed: _____

Project Address: _____

Contact Person: _____ **Contact Phone No.:** _____

PART 6: Ongoing & Relevant Projects

List three (3) ongoing and relevant projects currently in progress. Include information such as, but not limited to, Project Name & Address, percentage of completion, and contact person.

Project Name: _____ **Percentage Completed:** _____

Project Address: _____

Contact Person: _____ **Contact Phone No.:** _____

Project Name: _____ **Percentage Completed:** _____

Project Address: _____

Contact Person: _____ **Contact Phone No.:** _____

Project Name: _____ **Percentage Completed:** _____

Project Address: _____

Contact Person: _____ **Contact Phone No.:** _____

PART 7: Regulatory / Contractual

Indicate all occurrences of the following in the last five (5) years (indicate if none). For verification, attach documentation, and/or provide sufficient and appropriate detail information such as: project name, project address, owner, contact person, contact phone number, contract amount, etc.

- a. Prevailing Wage violations or judgments.
- b. Affirmative Action violations.
- c. Contract abandonment, Contract termination, as either a prime- or sub-contractor, or Surety takeover.
- d. Debarment by State, federal or local jurisdictions.
- e. EPA/OSHA violations.
- f. Liquidated damages and Statutory Delay Forfeiture assessed.
- g. Drug-Free Workplace Violations (Provide evidence that the bidder is enrolled in, and in good standing in, a Drug Free Workplace Program approved by the Ohio Bureau of Workers' Compensation "OBWC").

PART 8: Management

Identify individuals assigned to this Project.

Principal: _____ **Years with firm:** _____

Project Mgr.: _____ **Years with firm:** _____

Field Sup't.: _____ **Years with firm:** _____

PART 9: Certification

I hereby certify that the information in this entire Bidder's Qualifications form, including all attachments and referenced information, is factual and complete.

Company Name: _____

Authorized Official: _____ Title: _____

Date: _____

(Signature)

Proposed Work and Specs

- Remove the existing Hy-Crown hypalon, wall coping, gutters, and downspouts, and dispose of debris.
- Replace or repair any damaged metal/wood decking or edge plate
- Replace any wet 1.5" insulation that is found
- Provide and install an additional 2" x 6" edge plate along the gutter edge and the edge beneath the bleachers to accommodate the thickness of the additional insulation.
- Provide and install 1" (R-5.7) Johns Manville Energy 3 polyisocyanurate insulation over the existing insulation on the entire roof area.
- Provide and install 1/2" primed Dens Deck cover board over the entire roof
- Provide and install tapered insulation saddles behind the roof curbs.
- Provide and install fully adhered 60 mil Johns Manville KEE/PVC single-ply membrane according to the manufacturer's specifications. Color: White (20 year warranty.)
- Re-flash the existing curbs, pipes, and support columns using prefabricated hot air welded corners and boots.
- Fully wrap the parapet walls with the new membrane up the inside of the walls, over the top of the wall plate, and down the outside face of the walls.
- Hot air weld the seams in the membrane with a Leister Varimat robotic welder.
- Provide and install hot air welded T-joint patches on all cross seam intersections.
- Provide and install new 24 gauge Metal Era Perma-Tite coping on the two side parapet walls.
- Provide and install 24 gauge Perma-Tite system 200 (Snap-On version) Edge metal along the edge beneath the bleachers.
- Provide and install textured PVC walk mat around the equipment curbs in the service areas. Note: The mat is fully adhered in the center and hot air welded to the field sheet around the entire perimeter to hold it in place.
- There are parapet walls with coping on each end and a small ledge with coping on the edge beneath the bleachers. The roof area is 8,226 sq. ft. plus 505 sq. ft. of parapet wall and edge area to flash.
- Replace the existing fascia cover with new custom fabricated 24 gauge steel

Note: A permit will need to be obtained from East Central Ohio Building Authority for the roof replacement