

INSTRUCTIONS TO BIDDERS

Owner: Board of Education of the Warren City School District
105 High St. NE Warren, OH 44481

Project: Home Bleacher Maintenance and Renovation – Phase 2

Response Deadline: May 7, 2025 at 3:00 p.m., local time.

The Owner seeks sealed competitive bids for the above-identified Project, subject to the terms and conditions of these Instructions to Bidders and the accompanying Contract Documents.

ARTICLE 1 — GENERAL INFORMATION

1.1. Project Scope.

- 1.1.1.** Remove existing concourse asphalt area for regrading, storm line reconfiguration and replacement with slab on grade concrete.
- 1.1.2.** Install new concrete foundations for future storage buildings
- 1.1.3.** Extend necessary scheduled utilities (electrical) to future locations.
- 1.1.4.** Install new retaining wall elements, stairs/ramp, and associated railings adjoining new concrete concourse area.
- 1.1.5.** Renovate existing toilet rooms (2) and partially replace existing toilet fixturing and lighting fixtures. (No hvac work required)
- 1.1.6.** Renovate existing concession stand areas
- 1.1.7.** Removal and storage of concession stand movable equipment to temporary storage, to be accomplished by owner.
- 1.1.8.** Remove and reinstall portions of exterior perimeter security fencing
- 1.1.9.** Remove all existing exterior signage for replacement (by owner).
- 1.1.10.** Renovate existing pressbox:
- 1.1.11.** Pipe and install new toilet facility.
- 1.1.12.** Remove and replace exterior metal siding and asphalt roofing for replacement with new metal siding to mimic new Wellness Center
- 1.1.13.** and metal roofing.
- 1.1.14.** Repaint and minor renovation to pressbox interior.
- 1.1.15.** Offer alternative price for construction of concourse area storage buildings (Dimensions 20' x 50' Approx. 1,000 sq. ft.)

1.2. Anticipated Project Costs:

- 1.2.1.** Base Bid Scope of Work: \$800,00.00
- 1.2.2.** Alternate for storage bldg.. \$175,000.00
- 1.2.3. Prevailing wage rates do not apply to this Project.**

1.3. Anticipated Project Schedule. Preliminary services, if any, will begin upon execution of the Agreement. Construction is anticipated to commence May 14, 2025, and be completed as set forth below:

1.3.1. Substantial completion by: August 1, 2025.

1.3.3.Owner's Contact. The Owner's contact for this Project is John Lacy, Executive Director of Business Operations. (John.Lacy@warrencityschools.org)

1.4. Mandatory Pre-bid Meeting

1.4.1. A mandatory pre-bid meeting will be held on April 23, 2025 at 9:00 a.m at 860 Elm Rd. NE, Warren, Ohio 44483 underneath the home stands.

1.5. Contract Documents.

1.5.1.The following materials have been distributed with these Instructions to Bidders, all of which are considered Contract Documents:

1.5.1.1. These Instructions to Bidders, with Attachments.

ARTICLE 2 — BID SUBMISSION AND SELECTION PROCESS

2. Preparation of Bids

2.1. The Bid will include a completed Bid Form (in the form furnished with the Contract Documents), additional materials prepared by the Bidder containing information related to the Evaluation Criteria set forth in Section 2.7 of these Instructions (limited to 20 pages), a Contract Bond in the form provided (with the cost included on the Bid Form).

2.2. Complete all blank spaces on the Bid Form in ink or typewritten, in words and figures, and in figures only where no space is provided for words, and sign the form. In the case of a discrepancy between the numbers and words written, the Owner reserves the right to consult with the Bidder and determine the correct amount. Bidder shall base its pricing in its Bid Form on the Scope of Services provided in the Contract Documents.

2.3. Submit the Bid to the Owner in a sealed envelope prior to the Response Deadline.

2.4. The bid shall be submitted in a sealed envelope with the Bidder's name and title of the Project, and delivered to John Lacy, Executive Director of Business Operations, 105 High St. NE Warren, OH 44481.

2.5. Each bidder shall submit with its bid one of the following:

2.5.1. A bond in accordance with division (B) of RC 153.54 for the full amount of the bid. The bond shall be on the form set forth in RC 153.571. See **Attachment 5**.

2.5.2. A certified check, cashier's check, or letter of credit pursuant to Chapter 1305. of the Revised Code, in accordance with division (C) of RC 153.54. Any such letter of credit is revocable only at the option of the Owner. The amount of the certified check,

cashier's check, or letter of credit shall be equal to ten percent of the bid. The guaranty filed under this option shall be conditioned as set forth in RC 153.54(C)(1) and if the contract is awarded the bidder shall file a bond with the Owner that shall be on the form set forth in RC 153.57. See **Attachment 5**.

2.6. Opening of Bids. Bids will be accepted until the Response Deadline. Each Bidder is responsible for ensuring that its Bid is received by the Owner in accordance with these Instructions to Bidders.

2.7. Evaluation of Bid.

2.7.1. Standard of Award. The Owner intends to award the Contract for the Work to the lowest responsible bidder

2.7.2. Clarification of Bids. The Owner reserves the right to discuss the contents of the Bid with the Bidder and request additional information from the Bidder.

2.7.3. Evaluation Criteria. The Owner, in its sole discretion, will evaluate the Bidder and Bids to determine whether the bid conforms to the specifications and instructions herein, and whether any particular bidder is a responsible bidder. In making such determination, the Owner may consider the following criteria, and any such other criteria as it determines proper:

2.7.4. Bidder's work history.

2.7.5. Bidder should have a record of consistent customer satisfaction and of consistent completion of projects, including projects that are comparable to or larger and more complex than Owner's Project, on time and in accordance with the respective contract documents. If Bidder's management (i.e., president, chairman of the board, or any director) operates or has operated another construction company, Owner may also consider the work history of that company in determining Bidder's qualifications and experience.

2.7.6. Owner may consider Bidder's prior experience on other projects for Owner, including Bidder's demonstrated ability to complete its work on these projects in accordance with the Contract Documents, on time, and its ability to work with Owner.

2.7.7. Bidder authorizes Owner and its representatives to contact the owners and design professionals on projects on which Bidder has previously worked, and authorizes and requests such owners and design professionals to provide Owner with a candid evaluation of Bidder's performance. By submitting its Bid, Bidder agrees that if it or any person at its urging, directly or indirectly, brings an action against any of such owners or design professionals or their employees as a result of or related to such evaluation and such action is not successful, Bidder will reimburse such owners, design professionals and/or their employees for all

legal fees and expenses incurred by them that are related to such legal action, including the cost of collection. This obligation is expressly intended for the benefit of such owners, design professionals, and their employees.

2.7.8. Bidder's resources, including but not limited to the financial ability to complete the Contract successfully and on time and the experience, adequacy, and numbers of Bidder's workforce.

2.7.9. Bidder's compliance with federal, state, and local laws, rules, and regulations, and safety standards.

2.7.10. The foregoing information with respect to any of the subcontractors that Bidder intends to use on the Project.

2.7.11. Bidder's participation in a drug-free workplace program through the Ohio Bureau of Workers Compensation or a program approved by the Bureau of Workers Compensation.

2.7.12. Other essential factors, as determined by the Owner.

2.8. Upon request of the Owner, the Bidder will complete and submit to Owner, within three (3) days of the request, the following documents:

2.8.1. The list of all proposed subcontractors, suppliers, and manufacturers.

2.8.2. A proposed schedule for the Work.

2.8.3. A proposed schedule of values, allocating the breakdown of labor and material for the Project, including the sum for each, on AIA Documents G702 and G703, or another form acceptable to the Owner.

2.9. After approval by Owner of the list of proposed subcontractors, suppliers, and manufacturers submitted by the successful bidder, the list may not be changed unless written approval of the change is authorized by Owner. Failure to timely submit requested information may result in the determination that Bidder's Bid is not in the best interest of the Owner.

2.10. Negotiation of Contract.

2.10.1. The Owner will negotiate a contract with the Selected Bidder.

2.10.2. A copy of the form of agreement and associated Contract Documents that will be used for the Project included with these Instructions to Bidders.

2.10.3. If for any reason the Owner and Selected Bidder are unable to negotiate and execute the Agreement, the Owner may suspend negotiations with the Selected Bidder and initiate negotiations with the next Bidder determined to be in the Owner's best interest, and so on, until the contract is fully executed, or the Owner rejects all Bids.

ARTICLE 3 — ADDITIONAL INSTRUCTIONS

3. Questions

3.1. All questions must be submitted in writing to John Lacy, Executive Director of Business Operations, John.Lacy@warrencityschools.org, at least 7 days prior to the Response Deadline. The questions and answers will be emailed to all individuals and firms that were provided with a copy of the Instructions to Bidders.

3.2. The Owner and Design Professional may also email other Project-related information to the individuals and firms that were provided with a copy of the Instructions to Bidders.

3.3. Addenda.

3.3.1. Should any question prompt the Owner to amend the Instructions to Bidders, a notice will be sent to all individuals and firms that were provided with a copy of the Instructions to Bidders. Addenda will be deemed to have been validly given if emailed or otherwise furnished to each contact person of record.

3.3.2. When an Addendum to these Instructions to Bidders is necessary within 3 days before the Bid deadline, the Owner may extend the Bid deadline through an announcement via email. The Owner will make reasonable attempts to contact all necessary individuals.

3.4. Bid Certifications

3.4.1. By submitting a Bid, the Bidder certifies to the Owner that:

3.4.1.1. the Bidder has carefully reviewed the Project site and Contract Documents to become familiar with the requirements for the Work and has included all costs necessary to provide labor and materials for the Work in its Bid, including incidentals, whether or not specifically called for and to become familiar with the limitations and conditions related to the Work covered by the Bid and has included in the Bid a sum to cover the cost of such items;

3.4.1.2. the Bidder is not the subject of an unresolved finding for recovery issued by the Auditor of State under ORC Section 9.24;

3.4.1.3. the Bidder is not debarred under ORC Section 153.02;

3.4.1.4. the Bidder has not been found by a court to be in default of a judgment or breach of settlement agreement;

3.4.1.5. The Bidder has complied with the requirements of these Instructions to Bidders;

3.5. Cancellation and Rejection; Waiver of Minor Irregularities

3.5.1. The Owner may reject all Bids and cancel all or any portion of this solicitation at any time for any reason. The Owner will have no liability to any Bidder arising out of any

cancellation of this solicitation or rejection of any related submission. **This document is not an offer for a contract but is rather an invitation to submit a bid for consideration by the Owner.**

3.5.2. The Owner shall reject a Bid if the Owner determines that:

3.5.2.1. the Contract cannot be awarded under ORC Section 9.24 because the recommended Bidder has a finding for recovery issued by the Auditor of State, and the finding for recovery is unresolved;

3.5.2.2. The recommended Bidder is debarred under ORC Section 153.02;

3.5.2.3. the Owner has determined that the Bidder intended to engage in collusion with intent to defraud or other illegal practices; or

3.5.2.4. The Bid is more than 20% of the published estimate of probable construction cost.

3.5.2.5. The Bid is nonconforming.

3.5.3. The Owner may waive minor irregularities and defects at its sole discretion.

3.6. Bid Revision. The Owner may request a Bidder submit a revised Bid to clarify any questions which may arise while evaluating the Bids. If the Owner requests a clarification of any Bid, the Bidder must submit the clarification in writing to the Owner within 3 business days.

3.7. Applicable Law and Forum. The rights of any Bidder or any party to a subsequent Agreement shall be governed by Ohio law, and only the Court of Common Pleas of the County in which the Project is located shall have jurisdiction over any action or proceeding related to the Bid or any subsequent Agreement. The Bidder irrevocably consents to that jurisdiction.

3.8. Public Records. Interested firms should be advised that the Owner is subject to Ohio's public records laws. The Owner cannot guarantee the confidentiality of statements, financial records, or business records that are submitted by a firm to the Owner. The Owner may be required to make such records publicly available. The law does provide for certain exemptions from disclosure requirements, including an exemption for confidential proprietary information and for proposal submissions prior to acceptance. While this exemption may not always include a firm's financial and business records, we ask that you clearly stamp "Confidential and Proprietary Information" upon each page of each financial and/or business record that you believe to be confidential information. Such a stamp does not guarantee that your documents will be exempt from disclosure requirements, but will assist the Owner in responding to any public records requests. Pursuant to ORC Section 9.28, documents submitted to the Owner in response to these Instructions to Bidders will not be available for public inspection under ORC Section 149.43 until after the Owner either enters into a contract for the Work or cancels this bid.

4. ARTICLE 4 — ATTACHMENTS

- 4.1. **Attachment 1.** Bid Form
- 4.2. **Attachment 2.** Anti-Collusion Affidavit
- 4.3. **Attachment 3.** Delinquent Personal Property Tax Affidavit
- 4.4. **Attachment 4.** Form of Contract
- 4.5. **Attachment 5.** Bid Security & Bond Forms

[END OF DOCUMENT]

ATTACHMENT 1: BID FORM

Contractor Name: _____

Owner Name: Board Of Education of the Warren City School District

Contractor Address: _____

Contact Person Name: _____

Contact Person Phone: _____

Contact Person Email: _____

ARTICLE 1 — PRICING BID

Cost Proposal:

The Bidder will perform all Work identified work in accordance with the Contract Documents for the Owner for the sum of:

Base Bid: _____ (\$ _____)

Alternate: _____ (\$ _____)

Grand Total: _____

ARTICLE 2 — ADDENDA

2.0 Receipt of the following Addenda is hereby acknowledged:

Addendum No. _____ **Date:** _____

Addendum No. _____ **Date:** _____

Addendum No. _____ **Date:** _____

Addendum No. _____ **Date:** _____

ARTICLE 3 — PROPOSED CONSTRUCTION SCHEDULE

3.1 Bidder proposes the following schedule for the work, subject to Owner's agreement for inclusion in the contract documents:

3.1.1 Commencement Date: _____

3.1.2 Substantial Completion: _____

3.1.3 Closeout: _____

ARTICLE 4 — ACKNOWLEDGEMENTS & INFORMATION

4. Bidder hereby acknowledges that the following representations in this Bid are material and not mere recitals:
 - 4.1. Bidder has read and understands the Contract Documents and agrees to comply with all requirements of the Contract Documents.
 - 4.2. Bidder represents that the Bid is based upon the Contract Documents, including but not limited to the specifications.
 - 4.3. Bidder has visited the Project site, become familiar with local conditions, and has correlated personal observations about the requirements of the Contract Documents. Bidder has no outstanding questions regarding the interpretation of the Contract Documents based upon what it has observed and could reasonably have been expected to have observed.
 - 4.4. Bidder and each person signing on behalf of Bidder certify, 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:
 - 4.4.1. The Bid amount, any Unit Prices, and any Alternate items 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 Items with any other Bidder.
 - 4.4.2. Unless otherwise required by law, the Bid amount and any Alternate items 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 Bid amount or Alternate items.
 - 4.4.3. 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.
 - 4.4.4. Bidder will enter into and execute the Agreement with the Owner, if an Agreement is awarded on the basis of this Bid.
 - 4.5. Bidder certifies that upon the award of an Agreement, the Bidder will make a good faith effort to ensure that all of the Bidder's 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.
 - 4.6. Bidder agrees to furnish any information requested by the Owner to evaluate the experience, resources, and qualifications of the Bidder.

4.7. Bidder represents that it is not subject to a finding for recovery under Section 9.24, ORC, or that Bidder has taken the appropriate remedial steps required under Section 9.24, ORC, or otherwise qualifies under this section.

4.8. Bidder acknowledges that the person executing this bid document is authorized to do so in accordance with its internal rules and procedures and the **BIDDER HAS SUPPLIED EVIDENCE IN THE FORM OF A CORPORATE RESOLUTION OR OTHER EVIDENCE OF AUTHORITY SATISFACTORY TO OWNER WITH THIS BID DOCUMENT OR WILL DO SO UPON DEMAND FOLLOWING SUBMISSION.**

IN WITNESS WHEREOF, the authorized representative of the Bidder has set his or her hand hereunder in order to certify that the information provided in the foregoing information is true, accurate, and binding upon the Bidder identified herein.

ON BEHALF OF BIDDER:

Signature

Print

Title

Date

ATTACHMENT 2: ANTI-COLLUSION AFFIDAVIT

STATE OF OHIO

)

) SS.

COUNTY OF TRUMBULL

)

_____, of lawful age, being first sworn on oath say, that he/she is the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any state official or employees to quantity, quality, or price in the prospective contract, or any other terms of said prospective official concerning exchange of money or another thing of value for special consideration in the letting of contract; that the bidder/contractor had not paid, given or donated, or agreed to pay, give or donate to any officer or employee either directly or indirectly in the procuring of the award of a contract pursuant to this bid.

Signed: _____

Before me, a Notary Public of the State of Ohio, personally came _____,
 ____ (title) ____, of ____ (name of company) ____, bidder herein, who said that he/she testifies that
 the above information is a true and accurate statement. In Testimony Whereof, I have hereunto
 subscribed my name and affixed my official seal on this ____ day of _____, 2025. An
 oath was administered.

Notary Public (or Clerk or Judge) _____

My commission expires _____

ATTACHMENT 3: DELINQUENT PERSONAL PROPERTY TAX AFFIDAVIT

STATE OF OHIO)
) ss.
COUNTY OF TRUMBULL)

I, _____, having affirmed under oath that at the time of bid for the **Home Bleacher Maintenance and Renovation – Phase 2** to be opened April 23, 2025 was submitted on April 23, 2025, delinquent personal property taxes in the amount of \$_____ (Dollars) were due and unpaid to the County of Trumbull including interest in the amount of \$_____ (Dollars) and penalties in the amount of \$_____ (Dollars). This document when given to the County Auditor shall satisfy the requirements of ORC 5719.042.

(Name of Individual Company)

(Taxes Filed Under the Name of)

(Signature)

(Complete Address)

(Telephone)

Before me, a Notary Public of the State of Ohio, personally came _____, ____ (title) _____, of _____ (name of company) _____, bidder herein, who said that he/she testifies that the above information is a true and accurate statement. In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on this _____ day of _____, 2025. An oath was administered.

Notary Public (or Clerk or Judge) _____

My commission expires _____

ATTACHMENT 4: OWNER CONTRACTOR AGREEMENT

Owner: Board of Education of the Warren City School District **Contract:** General

Project: Home Bleacher Maintenance and Renovation – Phase 2 **Contractor:**

Location: **Address:**

Phone:

Contact:

Email:

Owner, a political subdivision of the State of Ohio, and Contractor have entered into this Owner-Contractor Agreement (“Agreement”) as of the date signed by Owner (“Effective Date”). The Project consists of, but is not limited to, the work as set forth in the Owner’s Instructions to Bidders and the Bidders Bid Submission Form, which are incorporated herein(the “Project”).

The Project Owner and Contractor agree as follows:

1. WORK.

1.1. Contractor will furnish all the labor, services, materials, plant, equipment, tools, scaffolds, appliances, and all other things (collectively called the “Work”) necessary for the timely and proper completion of the Project. All Work performed by the Contractor and its subcontractors shall be performed in a professional, workman-like manner in accordance with the highest industry standards.

1.2. 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 entire satisfaction of Owner, complete the Project by the Date for Substantial Completion. All materials and equipment provided must be new, free from all defects, fit for the purpose for which intended, and merchantable.

1.3. Contractor will assign a competent Project Supervisor. At the Owner’s request, Contractor will replace the Project Supervisor, provided that the request is reasonable. Owner will not be responsible for the acts or omissions of the Project Supervisor or his assistants.

1.4. Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or make its parts fit together properly.

2. CONTRACT DOCUMENTS.

2.1. The Contract Documents consist exclusively of this Agreement and its attachments; the Instructions to Bidders released by the Owner; the Contractor’s Bid Form; Contractor's Performance and Payment Bond, and any Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a

Construction Change Directive. Contractor agrees that it will use the State of Ohio Subcontract Form for all subcontracted work, unless another contract form is approved by the Owner upon request.

3. CONTRACTOR RESPONSIBILITIES AND OBLIGATIONS

- 3.1.** Contractor's duties and rights in connection with the project, in addition to those set forth elsewhere herein, are as follows:
- 3.2. Responsibility for and Supervision of the Project.** Contractor shall be solely responsible for all work being performed under this Contract, including the techniques, sequences, procedures, and means, and for coordination of all work. Contractor shall supervise and direct the work to the best of its ability, and give the work all attention necessary for such proper supervision and direction. All work shall be performed in a reasonable and workmanlike manner using due care to insure that all work is performed in a reasonably safe manner. Contractor shall meet as needed with the Owner to discuss progress, problems or concerns with the Project.
- 3.3. Discipline and Employment.** Contractor shall maintain at all times strict discipline among its employees, and agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which that person was employed.
- 3.4. Furnishing of Labor, Materials, Equipment, and Services.** Contractor shall provide and pay for all labor, materials, and equipment, including tools, construction equipment, and machinery, utilities, including water, transportation, and all other facilities and services necessary for the proper completion of work on the project in accordance with the Contract documents.
- 3.5. Payment of Taxes; Procurement of Licenses and Permits.** Contractor shall pay all taxes required by law in connection with work on the project in accordance with this Contract including sales, use, and similar taxes, and shall secure and pay the fees for all licenses and permits necessary for proper completion of the work.
- 3.6. Compliance with Construction Laws and Regulations.** Contractor shall comply with all applicable laws and ordinances, and the rules, regulations, or orders of all public authorities relating to the performance of the work. If any of the Contract documents are at variance with any of such requirements, the Contractor shall notify the Owner promptly on discovery of the variance.
- 3.7. Responsibility for Negligence of Employees and Subcontractors.** Contractor agrees to assume full responsibility for acts, negligence, or omissions of all of its employees on the project, for those of its subcontractors and their employees, and for those of all other persons doing work under a Contract with it.
- 3.8. Warranty of Fitness of Equipment and Materials.** Contractor represents and warrants to the Owner that all equipment and materials used in the work, and made a part of the structures, or placed permanently in connection with the work, will be new unless otherwise specified in the Contract

documents, of good quality, free of defects, and in conformity with the Contract documents. It is understood between the parties that all equipment and materials not in conformity are defective.

3.9. Samples and Shop Drawings. Contractor agrees to furnish all samples and shop drawings for the Owner's consideration and approval as to conformance with the Contract documents and the concepts of design called for by the documents.

3.10. Clean-up. Contractor agrees to keep the work premises and adjoining ways free of waste material and rubbish caused by its work or that of its subcontractors. The Contractor further agrees to remove all waste material and rubbish on termination of the project, together with all its tools, equipment, machinery and surplus materials. The Contractor agrees, on terminating its work at the site, to conduct general clean-up operations, including the cleaning of all glass surfaces, paved streets and walks, steps, and interior floors and walls.

3.11. Indemnity and Hold Harmless Agreement. Contractor agrees to indemnify and hold harmless the Owner, its agents, representatives, and employees, on a primary and noncontributory basis, from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees in case it shall be necessary to file an action, arising out of the performance of the work, which are (1) for bodily injury, illness, or death, or for property damage, including loss of use, and (2) caused in whole or in part by the Contractor's negligent act or omission, or that of a subcontractor, or that of anyone employed by them or for whose acts the Contractor or subcontractor may be liable.

3.12. Payment of Royalties and License Fees; Hold Harmless Agreement. Contractor agrees to pay all royalties and license fees necessary for the work, and to defend all actions and settle all claims for infringement of copyright or patent rights, and to save the Owner harmless in such actions or claims.

3.13. Safety Precautions and Programs. Contractor has the duty of providing for and overseeing all safety orders, precautions, and programs necessary for the reasonable safety of the work. In this connection, it shall take reasonable precautions for the safety of all work employees and other persons whom the work might effect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent to it, complying with all applicable laws, ordinances, rules, regulations, and orders.

4. OWNER REPRESENTATIVE AND DESIGN PROFESSIONAL.

4.1. Owner's Liaison. The Owner's Liaison is John Lacy, Executive Director of Business Operations. The Contractor will coordinate with the Owner's Liaison on behalf of the Owner.

4.2. Contractor at all times will provide Owner access to the Work.

5. TIME FOR COMPLETION AND PROJECT COORDINATION.

5.1. Project Time Schedule. The Work shall commence by the date set forth in the Owner's Notice to Proceed, which can be in the form of an email (the "Date of Commencement"), and shall be substantially completed no later than August 1, 2025.

5.2. Time is of the Essence. THE DATES IN THE PROJECT TIME SCHEDULE ARE OF THE ESSENCE OF THIS AGREEMENT. CONTRACTOR WILL PROSECUTE ITS WORK IN ACCORDANCE WITH THE PROJECT TIME SCHEDULE, INCLUDING ANY AMENDMENTS THERETO.

5.3. Contractor's Construction and Submittal Schedules.

5.3.1. The Contractor, within five (5) days of the date of any request from the Owner to submit scheduling information, shall submit the scheduling information for its Work to the Owner in such form and in such detail as requested. The Contractor shall prepare the Construction Schedule within twenty-one (21) days after the date of the Effective Date. The Contractor shall prepare all Construction Schedules in CPM format unless provided otherwise in the Contract Documents or otherwise in writing by the Owner. Each major category of Work shall be shown separately in the Construction Schedule with all the significant activities involved, showing durations of time, manpower requirements, and restraints. The Construction Schedule is for the purpose of coordinating the timing, phasing, and sequence of the Work of the Contractor and shall not change or modify the Date for Substantial Completion. The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification, or a Claim that is Finally Resolved, regardless of the dates in the Construction Schedule.

5.3.1.1. The Contractor shall update the Construction Schedule each month;

5.3.1.2. The Construction Schedule shall be manpower loaded;

5.3.1.3. The Contractor shall, on a weekly basis, prepare and submit to the Owner a written report describing the activities begun or finished during the preceding week, Work in progress, expected completion of the Work, a look-ahead projection of all activities to be started or finished in the upcoming two (2) weeks, including without limitation the Contractor's workforce crew size and total resource hours associated with such Work and any other information requested;

5.3.1.4. The float in the Construction Schedule and any updates to it shall belong to the Owner. Float shall mean the amount of time by which activities may be delayed without affecting the Date for Substantial Completion; and

5.3.1.5. The Contractor's obligation to submit requested scheduling information is a material term of its Contract. If the Contractor fails to submit requested scheduling information in writing within five (5) days of a request for such information from the Owner, the Contractor shall pay and the Owner may withhold from the Contractor Liquidated Damages at the rate of Fifty Dollars (\$50.00) a day for each calendar day thereafter that the Contractor fails to submit the requested information. The parties agree that the damages to the Owner caused

by delays of the Contractor in providing the required schedule information on time are difficult to determine and this liquidated damages amount is a reasonable estimate of such damages and is not intended as and does not constitute a penalty.

- 5.3.2.** The Contractor shall perform the Work in accordance with the most recent Construction Schedule submitted to the Owner, provided that the Contractor shall comply with any orders under Section 5.3.3. However, preparation of such schedule shall not constitute a waiver of the Owner's rights under the Contract to have the Work completed by the Date of Substantial Completion.
- 5.3.3.** If the Owner determines that the performance of the Work has not progressed so that it is likely that the Contractor will not Substantially Complete its Work by its Date of Substantial Completion, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the Work, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures ("Corrective Measures"). If the Owner orders the Contractor to take such corrective measures, the Contractor shall take and continue such Corrective Measures until the Owner is satisfied that the Contractor is likely to Substantially Complete its Work by its Date for Substantial Completion.
- 5.3.3.1.** The Contractor shall not be entitled to adjustment in the Contract Sum in connection with the Corrective Measures required by the Owner pursuant to this Section, unless the Contractor is able to establish that it is entitled to additional compensation under the terms of the Contract Documents.

5.4. Delays and Accelerations.

5.4.1. Notice of Delays. Contractor will give Owner written notice of any delay affecting its Work in the form and with the information specified in the Contract Documents within forty-eight (48) hours of the commencement of the delay; provided that the 48-hour notice will be extended to ten (10) days for unusually severe weather conditions not reasonably anticipatable. The failure to give the required notice constitutes an irrevocable waiver of Contractor's right to seek an extension of time and/or additional compensation/damages for the delay. Owner, in its sole and reasonable discretion, shall determine whether a delay entitles Contractor to time extension or additional compensation. Any time extension or additional compensation will only be granted pursuant to the procedures for Change Orders set forth in this Agreement, and the only delays for which Contractor will be entitled to seek additional compensation are those which Contractor establishes were proximately caused by an improper action or failure to act by Owner.

5.4.2. Acceleration of the Work. Owner may require Contractor to accelerate its Work by adding workers or working additional shifts, extended shifts, or overtime, so that the Work is in final form before the Date for Substantial Completion. If Owner requires Contractor to accelerate its Work, Contractor will within five (5) days take the required action, and Owner thereafter will issue a Change Order increasing the Contract Sum to pay for Contractor's additional costs of accelerating

its Work so that the Work is in final form before the Date for Substantial Completion. If there is a dispute as to whether Contractor is entitled to a Change Order for accelerating its Work, Contractor must proceed to accelerate its Work without waiting for a Change Order or payment of any additional compensation but may reserve its right to make a claim against Owner for its additional costs incurred in accelerating its Work. Contractor's additional costs for accelerating its Work will be determined in accordance with Section 5.4.3.

5.4.3. Compensation for Acceleration of the Work.

5.4.3.1. Owner's Obligation to Pay. When Owner initiates the acceleration of the Work, Owner will pay Contractor, as provided in this section, for Contractor to accelerate its Work so that its Work is in final form before the Date for Substantial Completion. However, when Contractor's Work must be accelerated as a result of its own fault or the fault of its subcontractors or suppliers, Owner will not pay Contractor for such acceleration.

5.4.3.2. Compensation for Acceleration of the Work. To the extent that Owner requires Contractor to accelerate its Work so that the Work is in final form before the Date for Substantial Completion, Owner will pay Contractor for Contractor's reasonable additional costs of accelerating its Work, as determined in accordance with this section. The additional costs of accelerating the Work will be (a) any premium for overtime, additional shift work, or extended shift work, (b) the cost of any additional supervision or general conditions required by the acceleration, (c) out-of-pocket cost of any additional equipment required for the acceleration, (d) to the extent Contractor can document lost productivity due to the acceleration, the cost associated with such lost productivity, and (e) overhead, including home office overhead, and profit equal to 10% of the total amount of the other items for which additional compensation is permitted under this section. The foregoing is the only additional compensation and/or damages Contractor will be entitled to receive for accelerating its Work so that it is complete before the Date for Substantial Completion. As a condition precedent to its recovery of additional compensation, Contractor must provide Owner with full information about the costs of accelerating its Work in the form and format requested by Owner.

6. CORRECTIVE ACTION.

6.1. If Owner determines that 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 Contractor is not on schedule, or is not otherwise performing its obligations under the Contract Documents, CONTRACTOR MUST IMMEDIATELY, AND WITHIN TWO (2) BUSINESS DAYS AFTER NOTICE OF SUCH DETERMINATION, (1) COMMENCE SUCH ACTION AS IS NECESSARY TO CORRECT THE DEFICIENCIES NOTED BY OWNER, (2) PROCEED TO USE ITS BEST EFFORTS TO CORRECT SUCH DEFICIENCIES WITHIN THIRTY (30) DAYS OF SUCH

NOTICE AND/OR, (3) IF OWNER INSTRUCTS CONTRACTOR TO TAKE SPECIFIED CORRECTIVE ACTION, 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 shall be taken and continued uninterruptedly without waiting to initiate any dispute under Section 10 of this Agreement or the resolution of any dispute initiated under such section.

7. COMPENSATION.

7.1. Contract Sum. The Contract Sum to be paid by Owner to Contractor, as provided herein, for the satisfactory performance and completion of the Work and all of the duties, obligations and responsibilities of Contractor under this Agreement and the **other Contract Documents** is TBD.

7.2. 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 Contractor on account of the Work or the materials incorporated into the Work. Contractor is responsible to pay any such taxes. Only those materials that ultimately become a part of the completed structure or improvement that constitutes the Project shall be exempt from state sales tax and state use tax. The purchase, lease, or rental of material, equipment, parts, or expendable items as concrete form lumber, tools, oils, greases, and fuels, which are used in connection with the Work, are subject to the application of state sales tax and state use tax.

7.3. The Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time negotiations are concluded.

7.4. Liquidated Damages.

7.4.1. Contractor must have its work substantially completed by the date stated in Section 4.1; the timeline may be varied following award of the contract based upon Contractor's ability to perform the work on a different timeline acceptable to Owner. By entering into this Agreement, Contractor agrees that the period for performing the Work is reasonable and that Contractor's Work can be substantially complete by the date stated in this Agreement.

7.4.2. If Contractor does not have its Work on the Project substantially complete by the date for Substantial Completion stated in Section 5.1, Contractor shall pay the Owner (and the Owner may set off from sums coming due Contractor) liquidated damages in the per diem amount stated in the following chart for each calendar day beyond the date for Substantial Completion, as may be modified in accordance with the Contract Documents, that the Work fails to be substantially complete.

Contract Amount	Per Diem
\$0.01 to \$50,000.00	\$100.00
\$50,000.01 to \$150,000.00	\$200.00

\$150,000.01 to \$500,000.00	\$300.00
\$500,000.01 to \$750,000.00	\$400.00
\$750,000.01 to \$1,000,000.00	\$500.00
\$1,000,000.01 to \$2,000,000.00	\$600.00
More than \$2,000,000.01	\$700.00

7.4.3. Contractor acknowledges by signing this Agreement with Owner that the amount of liquidated damages represents a reasonable estimate of the actual damages Owner would incur if the work is not substantially complete by the Substantial Completion Date, is not a penalty, and that the damages that may result from the failure to substantially complete the work by the Substantial Completion Date are uncertain and difficult to ascertain. These liquidated damages are damages for loss of use of the Project, as well as additional costs incurred due to the delay, and Contractor, in addition to the liquidated damages will be obligated to indemnify and hold Owner harmless from any claims as a result of the delay, and if the Work on the Project is accelerated because of delay, for all costs related to the acceleration of the Work, as provided in the Contract Documents. Nothing herein shall preclude the Owner from recovering its actual damages from the Contractor for third-party claims against the Owner or damages not associated with delay.

8. PAYMENT AND RETAINAGE.

8.1. Payment.

8.1.1. Applications for Payment. Payment applications shall be submitted on a monthly basis and shall reflect the amount of work completed as of the date the application for payment is submitted consistent with the Schedules of Values. Payment applications must be received by the Owner not later than the fifteenth (15th) day of the month; payment applications received after the 15th day of the month will be deemed to be received in the following month and will be held for payment during the following payment period.

8.1.2. Contractor shall submit to the Owner an itemized payment application on a monthly basis, which shall reflect the amount of Work completed as of the date the application for payment is submitted. With each application for payment the Contractor shall submit one copy of the following documentation:

- (a) Invoice for work performed and materials and equipment provided for the previous pay period; and
- (b) Such other supplemental information as the Owner may require. Such other information may include a schedule of all materials and equipment stored on site.

8.1.3. Owner may withhold payment in whole or in part, and may demand that Contractor refund amounts previously paid, to protect Owner from loss because of:

- (a) 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 Owner;
- (b) Contractor's default or failure to perform any of its obligations under another contract that it has with Owner;
- (c) The filing of third-party claims, or reasonable evidence that third party claims have been or will be filed;
- (d) The Work has not proceeded to the extent set forth in the application for payment;
- (e) Any representations made by Contractor are untrue;
- (f) The failure of Contractor to make payments to its Subcontractors;
- (g) Damage to Owner's property or the property of another person or laborer;
- (h) The determination that there is a substantial possibility that the Work cannot be completed for the unpaid balance of the Contract Sum; and/or
- (i) Liens filed or reasonable evidence indicating the probable filing of such liens.

8.1.4. Owner will pay Contractor within thirty (30) days after receipt 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. Amounts unpaid after thirty (30) days after Owner's receipt of the payment application shall bear interest at the rate of zero percent (0%).

8.2. Retainage.

8.2.1. Amount of Retainage.

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

8.2.1.2. Payments for Materials and Equipment. Payments for materials and equipment will be at the rate of 92% of the invoice cost of materials and equipment delivered

to the Project site or other storage site approved by Owner. The balance of the invoice cost will be payable when the materials or equipment are incorporated into the Work. Incorporated into the Work means such materials and equipment are installed and conform to the requirements of the Contract Documents. When payment is made on account of materials or equipment not yet incorporated into the Project, such materials and equipment will become the property of Owner; provided that if such materials or equipment are stolen, destroyed, or damaged before being fully incorporated into the Project, Contractor shall be required to replace them at its expense.

8.2.2. Interest on Retainage.

8.2.2.1. Contractor agrees that Owner may hold retained amounts in the project construction fund and is not required to deposit the retained funds into a separate interest-bearing savings account. The balance of the retained funds, plus interest, will be paid to Contractor as its final payment for the Project, less any amounts needed to cover damages or costs incurred by Owner related to the Work.

8.2.2.2. Documentation. Upon request, Contractor immediately will supply Owner with requested information so as to verify the amounts due to Contractor, including but not limited to original invoices for materials and equipment and documents showing that Contractor has paid for such materials and equipment, and so as to verify that amounts due laborers, subcontractors, and materialmen have been paid to them.

8.3. Final Payment.

8.3.1. The final application for payment shall be itemized and submitted after completion of the Work specified for the Project. Contractor shall ensure that the final application for payment shall contain one (1) copy of each of the following documents, if not previously delivered to Owner.

- (a) Items (a)&(b) in Section 8.1.2;
- (b) Contractor's Certificate of Insurance;
- (c) Contractor's Workers' Compensation Certificate;
- (d) Consent of Contractor's Surety to Payment;
- (e) An assignment to Owner of all warranties obtained or obtainable by Contractor from manufacturers and suppliers of equipment and materials incorporated into the Work by written instrument of assignment in a form acceptable to Owner; and

- (f) Such other documentation as required by the Contract Documents, Owner, or applicable law.

8.3.2. The making of Final Payment by Owner does not constitute a waiver of Claims by Owner for the following:

- (a) Liens, Claims, security interests, or encumbrances arising out of the Contract Documents that are unsettled;
- (b) Failure of the Work to comply with the requirements of the Contract Documents;
- (c) Terms of special warranties required by the Contract Documents.
- (d) Claims for Indemnification.
- (e) Claims about which Owner has given Contractor written notice; or
- (f) Claims arising after Final Payment.

9. CHANGES IN THE WORK.

9.1. Change Orders.

- 9.1.1.** A Change Order is a written instrument signed by Owner and 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.
- 9.1.2.** All Change Orders shall be submitted with any supporting documentation requested by the Owner in advance of the performance of the Work that is the subject of the Change Order and must be approved by the Owner in writing in advance of the performance of the Work that is the subject of the Change Order.
- 9.1.3.** The agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including but limited to all direct, indirect, and cumulative costs that include reasonable overhead and profit associated with such change and any and all adjustments to the Contract Sum and in the Project Time Schedule. Total cumulative overhead and profit for all Subcontractors on any add or deduct Change Order shall not exceed 15% of the total cost of labor and material. The Contractor shall not proceed with any change in the Work without a signed Change Order. The Contractor's failure to timely seek and obtain such authorization as specified herein, shall constitute an irrevocable waiver by the Contractor of an adjustment to the Contract Sum or the Project Time Schedule for the related work.

9.2. Construction Change Directives.

- 9.2.1.** A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
- 9.2.2.** A Construction Change Directive shall be used in the absence of total agreement of a Change Order.
- 9.2.3.** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- 9.2.4.** When the Owner and Contractor agree with adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately, and the Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.
- 9.2.5.** If the Contractor disagrees with the adjustment in the Contract Time or the Contract Sum, the Contractor may make a Claim in accordance with applicable provisions of Article 10.

10. CLAIMS AND DISPUTES.

- 10.1.** A Claim is a demand or assertion by one of the parties 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 Owner's decision to adjust or withhold payment under Section 8.1.3 will not be considered a Claim. The responsibility to substantiate claims shall rest with the party making the Claim. Contractor will not knowingly (as "knowingly" is defined in the federal False Claims Act, 31 U.S.C. Section 3729, *et seq.*) present or cause to be presented a false or fraudulent Claim. As a condition precedent to making a claim, Contractor must submit an affidavit sworn to before a notary public or other person authorized to administer oaths in the State of Ohio and executed by an authorized representative of Contractor, which states that:
- 10.2.** The Claim submitted herewith complies with Section 10.1 of the Owner-Contractor Agreement.
- 10.3.** If 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 Contractor wishes to make a Claim for additional time, Contractor will 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 must 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. If conditions are encountered at the site which 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, then the observing party shall give written notice to the other party promptly before conditions are disturbed and in no event later than forty-eight (48) hours after first observance of the conditions. If the conditions are materially different and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, Owner will issue an appropriate Change Order.
- 10.6. 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 results in an irrevocable waiver of the Claim.
- 10.7. Within ten (10) days of its receipt of a written request, Contractor must make available to Owner or its representative any books, records, or other documents in its possession or to which it has access relating to any Claim and must require its Subcontractors, regardless of tier, and materialmen to do likewise.
- 10.8. If a Claim has not been resolved within ninety (90) days after submission to the other party, unless agreed otherwise in writing by the parties, the Claimant's exclusive remedy is to file suit in the Common Pleas Court for the county in which the Project is located, unless the parties otherwise agree to mediation in writing. Each party waives its right to remove any such suit to federal court.
- 10.9. Unless otherwise agreed in writing, Contractor shall continue its Work on the project and shall maintain progress during any mediation, or litigation proceedings, and the Owner shall continue to make payments to the Contractor in accordance with this Agreement, however, the Owner shall be under no obligation to make payments on or against any claim or amounts in dispute during the pendency of any mediation, arbitration, or litigation proceeding to resolve those claims or amounts in dispute.
- 10.10. **Settlement Offers.** If the Contractor initiates a claim, the Owner may make settlement offers to settle the Claim at any time up to the date of trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence. If at any stage of the litigation, including any appeals, the Contractor's Claim is dismissed or found to

be without merit, or if the damages awarded to the Contractor on its Claim do not exceed the Owner's last settlement offer, the Contractor shall be liable to the Owner and shall reimburse the Owner for all the Owner's attorneys' fees and expenses, and arising out of or related to such Claim since the date of such last settlement offer.

11. DEFAULT OF CONTRACTOR.

11.1. Events of Default. Each of the following constitutes an event of default of Contractor:

- 11.1.1.** Contractor's failure to perform any of its obligations under the Contract Documents and to proceed to commence to correct such failure within two (2) business days after written notice thereof from Owner or such lesser time as is provided in the Contract Documents, or
- 11.1.2.** Contractor's failure thereafter to use its best efforts to correct such failure, or
- 11.1.3.** Except when an extension of time is granted in writing by Owner, to correct such failure within thirty (30) days after receipt of written notice thereof.
- 11.1.4.** Contractor's failure to pay its obligations as they become due or Contractor's insolvency.

11.2. Owner's Remedies. Upon the occurrence of an event of default, Owner has the following remedies, which are cumulative:

- 11.2.1.** Order Contractor to stop the Work, which Contractor must 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 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 Contractor, all of which Contractor hereby transfers and assigns to Owner for such purpose, and to employ any person or persons to complete the Work, including Contractor's employees, and Contractor will not be entitled to receive any further payment until the Work is completed;
- 11.2.4.** To accept assignment of Contractor's subcontracts for the Project, pursuant to any prior rights of the surety, if any, and, at the Owners' sole discretion, to further assign the subcontracts to a successor contractor or other entity provided that (i) the Owner

terminates this Agreement for cause, and (ii) provides written notice of such assignment to both Contractor and Subcontractor; and/or,

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

11.3. Termination of Agreement. The termination of this Agreement will be without prejudice to Owner's rights and remedies, including without limitation Owner's right to be indemnified by 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 Owner as a result of the event of default, including attorneys' and consultants' fees and the administrative expense of Owner's staff, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor is responsible to pay the difference to Owner. The obligations under this section will survive termination of this Agreement.

12. DEFAULT OF OWNER.

12.1.Events of Default. The following constitutes the exclusive events of default of Owner:

12.1.1. Failure of Owner to perform any of its obligations under the Contract Documents and to correct such failure within thirty (30) days after receipt of written notice thereof from Contractor specifying the default and the necessary corrective action.

12.1.2. The failure of Owner to pay Contractor as payment becomes due under this Contract.

12.2. Contractor's Remedy.

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

12.2.2. If Owner fails to pay Contractor as payment becomes due, Contractor may, upon fifteen (15) days written Notice, stop the Work until payment of the amount owing has been received. An adjustment to the Contract Sum will be made as if the Work had been suspended for the convenience of Owner under Section 13.1.

13. SUSPENSION OR TERMINATION FOR THE CONVENIENCE OF OWNER.

13.1. Suspension for the Convenience of Owner.

13.1.1. Owner may, without cause, order Contractor to suspend, delay, or interrupt the Work in whole or in part for such period of time as Owner may determine.

13.1.2. An adjustment will be made for increases in the cost of performance of the Work, including profit and overhead on the increased cost of performance, caused by the suspension, delay or interruption, provided that the total cost of profit and overhead shall not exceed ten percent (10%) of the amount of the increased cost not attributable to profit or overhead. No adjustment will be made to the extent that:

- (a) performance is, was or would have been so suspended, delayed, or interrupted by another cause for which Contractor is responsible; or
- (b) an equitable adjustment is made or denied under another provision of this Agreement.

13.2. Termination for the Convenience of Owner.

13.2.1. Owner may, in its discretion and without cause, upon three (3) business days' written notice to Contractor terminate this Agreement for Owner's convenience and without cause.

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

13.2.3. If this Agreement is terminated for the Owner's convenience and without cause and there exists no event of Contractor's default, as defined in this Agreement, the Contractor shall be entitled to receive payment (i) for Work properly executed up to the date the notice of termination is received by Contractor, including overhead and profit up to the date of termination, and (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.

13.2.4. If this Agreement is terminated for the Owner's convenience and without cause and there exists an event of Contractor's default, as defined in this Agreement, Contractor will be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default under this Agreement.

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

14. INSURANCE, INDEMNIFICATION, AND BONDS.

14.1. Contractor must maintain commercial general liability insurance in the minimum amount of \$1,000,000.00 per incident and \$2,000,000.00 aggregate, worker's compensation coverage as required by the Ohio Revised Code, automobile liability coverage in the minimum amount of \$1,000,000.00 per accident and \$2,000,000 aggregate, and an umbrella policy in the minimum amount of \$5,000,000.00, unless Owner approves other coverage limits. Excess or umbrella coverage may be used to meet these levels of insurance. The Owner shall be named as an additional insured on the Contractor's insurance policies. The Contractor shall provide a certificate of insurance showing the required coverages, with the Owner named as a certificate holder and as an additional insured; Contractor also agrees to provide Owner with at least thirty (30) days' notice prior to any changes in coverage of the required insurance.

14.1.1. The Contractor shall maintain Contractors Errors & Omissions Liability Insurance insuring against errors and omissions arising from the Work if the Work involves any construction management or the preparation of plans and drawings, with limits of not less than \$1,000,000.00 per claim. Such policy shall not contain any exclusions directed toward any types of materials, services or processes involved in the Work. The retroactive date for coverage will be no later than the commencement date of design and will state that in the event of cancellation or nonrenewal the discovery period for insurance claims will be at least three (3) years or otherwise as by written agreement with the Owner.

14.2. Insurance furnished by the Owner, if any, is not intended to and does not cover equipment and materials before they are physically incorporated into the Work or tools. Contractor bears the entire risk of loss with respect to tools, equipment, and materials. Contractor is responsible for damages to Owner's property and to adjacent property caused by or related to the Work or actions by Contractor's employees or those of its subcontractors.

14.3. The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. 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 as provided in Section 7.3 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 14.3 to be covered, whichever is later. The insurance shall include interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the Project.

14.4. Owner and Contractor waive all rights against each other and against Subcontractors, Sub-subcontractors, consultants, agents, and employees of the other for damages, but only to the

extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance.

14.5. To the maximum extent permitted by law, Contractor shall indemnify and hold harmless Owner and 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 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 against funds, 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. Owner may set off amounts equal to any sums for which it is entitled to be indemnified from the amounts otherwise due Contractor under the Contract Documents.

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

14.7. Contract Bond.

14.7.1. The Contractor shall provide a contract bond to guaranty payment and performance of the Work, as required by Ohio law. When the Contractor delivers the executed counterparts of the Agreement to the Owner, the Contractor shall deliver such bond to the Owner, along with other documents as may be required.

14.7.1.1. If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of the Agreement or Ohio law, the Contractor shall promptly notify the Owner and shall, within twenty (20) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of the Contract Documents and Ohio law.

14.7.2. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

14.7.3. Material Default or Termination. If the Owner notifies the Contractor's surety that the Contractor is in material default or terminates the Contract, the surety will promptly and within twenty-one (21) days investigate the claimed material default or termination. If the Owner gives a notice of material default and then terminates the Contract, the surety shall complete its investigation within twenty-one (21) days of the notice of material default. As part of such investigation, the surety shall visit the offices of the Contractor and Owner to review the available project records. If the surety proposes to take over the Work, the surety shall do so no later than the expiration of the twenty-one (21) day period or ten (10) days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Work, and the surety proposed to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents, including meeting all of the requirements of the Contract Documents. If the Contractor is terminated, the replacement contractor shall not be the Contractor. The surety will provide the Owner with the results of its investigation, including any written report or documents. This Section is in addition to the Owner's rights under this Agreement to terminate the Contractor for cause and is not intended to create any rights of the surety, including but not limited to the right to take over the Contractor's obligations.

15. WARRANTIES.

15.1. 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, Contractor warrants and guarantees that:

- (a) Owner will have good title to the Work and all materials and equipment incorporated into the Work will be new;
- (b) The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;
- (c) The Work and all equipment incorporated into the Work will be fit for the purpose for which intended;
- (d) The Work and all materials and equipment incorporated into the Work will be merchantable; and
- (e) The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, Contractor, in addition to any other requirements in the Contract Documents, shall commence to correct such breach and all damage resulting therefrom within two (2) business days after written notice thereof, thereafter shall use its best efforts to correct such breach and damage to the

satisfaction of Owner and, except when an extension of time is granted in writing by Owner, correct such breach and damage to the satisfaction of Owner within thirty (30) days of such notice; provided that if such notice is given after final payment hereunder, such 2-day period will be extended to seven (7) days. If Contractor fails to commence to correct such breach and damage, or to correct such breach and damage as provided above, Owner, upon written notice to Contractor and without prejudice to any of its other rights or remedies, may correct the deficiencies. Contractor upon written notice from Owner shall pay Owner, within ten (10) days after the date of such notice, all of Owner's costs and expenses incurred in connection with or related to such correction and/or breach, including without limitation Owner's administrative, legal, and consulting expenses. The foregoing warranties and obligations of Contractor will survive the final payment and/or termination of this Agreement. If the Contractor fails to pay the Owner any amounts due under this Agreement, Contractor will pay Owner, in addition to the amounts due, a late payment fee of one and one-half percent (1.5%) per month for each month or part thereof that the payments are not paid when due. Said payment is a reasonable estimate of the Owner's damages in such event and is not a penalty.

16. GENERAL.

16.1. Modification. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents shall be effective against a party unless set forth in writing and signed by or on behalf of a party, which in the case of Owner shall require the signature of Owner's President, Superintendent or Treasurer acting under the authority of a specific resolution of Owner. 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 Paragraph.

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

16.3. Third Parties. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Contractor.

16.4. 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 shall be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court for the county in which the Project is located or other county court having subject matter jurisdiction, and each party hereby expressly consents to the jurisdiction of such court. Each party waives its right to remove any such suit to federal court.

16.5. 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 Owner will not commence until the discovery of such defective or non-conforming Work by Owner.

16.6. Notices. Notices, requests, or demands by either party shall be in writing, unless otherwise expressly authorized, and shall be personally served; forwarded by expedited messenger service; sent by facsimile transmission; sent by electronic mail with delivery confirmation; or be given by registered or certified mail, return receipt requested, postage prepaid, and addressed the party at the address set forth at the beginning of this Agreement. Any party may change its address by giving notice hereunder. All notices, requests, and demands shall 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 electronic mail or facsimile transmission, upon the expiration of 24 hours after the transmission is sent.

16.7. 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 shall not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

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

16.9. 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 shall remain in full force and effect, and such term shall be deemed stricken; provided this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

16.10. Compliance with Laws and Regulations. Contractor, at its expense, must comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work.

16.11. Project Safety. Contractor must follow all applicable safety and health regulations during the progress of the Project and monitor all of its employees and its subcontractors for compliance with such safety and health regulations. In undertaking the responsibilities set forth in this section, Contractor does not assume any duty or responsibility to the employees of any Subcontractor or supplier, regardless of tier. 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 Contractor.

16.12. Equal Opportunity. 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 race, religion, color, sex, or national origin. 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. Contractor is responsible to ensure that each of its Subcontractors, regardless of tier, states 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 race, religion, color, sex, or national origin.

16.13. Use of Owner's Facilities. Contractor will ensure that neither its employees, nor its Subcontractor's or material supplier's employees, regardless of tier, do any of the following without the express prior written consent of Owner:

- (a) use Owner's cafeteria, rest rooms, or phones;
- (b) use or bring any alcoholic beverages, controlled substances, or firearms on any property owned by Owner;
- (c) use any radios, tape or compact disc players, or sound amplification equipment; and
- (d) initiate or react to any visible or audible actions toward students, teachers, or staff members of Owner. Contractor must conspicuously post notice of the prohibitions listed in this section at the Project site in the same location as OSHA notices are required to be posted and shall verbally inform all of Contractor's employees, and the employees of Contractor's Subcontractors and materialmen, regardless of tier, of such prohibitions. The notice must be in a form acceptable to Owner.

16.14. 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.

16.15. Attachments. Attachments to this Agreement include:

Exhibit A: Sales and Use Tax Construction Contract Exemption Certificate

However, in the event of an inconsistency, the provisions of this Agreement control over any bid, document, or other attachment.

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.

**BOARD OF EDUCATION OF
THE WARREN CITY SCHOOL
DISTRICT**

CONTRACTOR

Julian Walker, President

Signature

Date

Print

Karen Sciortino, Treasurer

Title

Date

Date

CERTIFICATE OF FUNDS

(ORC Section 5705.41)

The undersigned, Treasurer of the Warren City School District, hereby certifies in connection with the Agreement to which this Certificate is attached that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the attached agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

Dated: _____

Karen Sciortino, Treasurer

CERTIFICATE OF FUNDS

(ORC Section 5705.412)

The undersigned Treasurer and President of the Warren City School District Board of Education, and the Superintendent of Warren City School District, hereby certify that the District has in effect for the term of the contract the authorization to levy taxes including the renewal or replacement of existing levies which, when combined with the estimated revenue from all other sources available to the District at the time of this certification, are sufficient to provide the operating revenues necessary to enable the district to maintain all personnel and programs for all the days set forth in its adopted school calendars for the current fiscal year and for a number of days in succeeding fiscal years equal to the number of days instruction was held or is scheduled for the current fiscal year.

Dated: _____, 2025

By: _____ Karen Sciortino, Treasurer

By: _____ Steve Chiaro, Superintendent

By: _____ Julian Walker., President

[END OF DOCUMENT]

**EXHIBIT A Sales and Use Tax
Construction Contract Exemption Certificate**

Owner: Board of Education of the Warren City School District

Exact location of job/project: _____

Name of job/project as it appears on contract documentation: District Paving and Sealing Project

The undersigned hereby certifies that the tangible personal property purchased under this exemption certificate is purchased exempt of the tax for incorporation into:

<input type="checkbox"/>	A building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes as defined in Ohio Revised Code (R.C.) section 5739.02(B)(12);	<input type="checkbox"/>	Real property that is owned, or will be accepted for ownership at the time of completion, by the United States government, its agencies, the state of Ohio or an Ohio political subdivision;
<input type="checkbox"/>	A horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;	<input type="checkbox"/>	Real property under a construction contract with the United States government, its agencies, the state of Ohio, or an Ohio political subdivision;
<input type="checkbox"/>	The original construction of a sports facility under R.C. section 307.696;	<input type="checkbox"/>	A building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes;
<input type="checkbox"/>	A hospital facility entitled to exemption under R.C. section 140.08;		
<input type="checkbox"/>	A computer data center entitled to exemption under R.C. 122.175; _____ % exempt per OH Dept. of Development	<input type="checkbox"/>	A house of public worship or religious education;
<input type="checkbox"/>	A megaproject entitled to exemption as described in R.C. 5739.02(B)(13).	<input type="checkbox"/>	Building and construction materials and services sold for incorporation into real property comprising a convention center that qualifies for property tax exemption under R.C. 5709.084 (until one calendar year after the construction is completed).
<input type="checkbox"/>	Real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;		

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

Prime Contractor

Name _____

Signed _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Owner/Contractee

Name _____

Signed _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Subcontractor

Name

Signed

Title

Street address

City, state, ZIP code

Date

[END OF DOCUMENT]