

Request for Proposals

Owner Yellow Springs Exempted Village School District

Project Facilities Maintenance Plan Advisor

Project Location Mills Lawn Elementary School
200 South Walnut Street
Yellow Springs, OH 45387

McKinney Middle School/ Yellow Springs High School
420 E. Enon Road
Yellow Springs, OH 45387

Response Deadline May 3, 2022 at 2:00 PM submitted to Terri L. Holden at tholden@ysschools.org

The Owner seeks competitive Proposals for the above-identified Project, subject to the terms and conditions of this Request for Proposals and the accompanying Contract Documents. Services are being procured are outside the scope of the statutory bidding requirements for public school districts. Any references in the Contract Documents to “bid” or “bidding” are to be read consistent with the proposal process being implemented.

Article 1 — General Information

§ 1.1 Project Description.

§ 1.1.1 Project Scope of Services.

§ 1.1.1.1 The selected Contractor will enter into a Facilities Maintenance Plan Advisor Agreement (the “Agreement”) with the Owner to develop an ongoing maintenance plan for the continued occupation and use of the Mills Lawn Elementary School and the McKinney Middle School and Yellow Spring High School (“the Facilities”). The Facilities are located on two separate sites. The Mills Lawn Elementary School is a 47,324 sf, K-6 school building constructed in 1952 and renovated in 1957 and 2002. The McKinney Middle School and Yellow Spring High School is a 74,229 sf, 7-12 school building constructed in 1963 and subsequently renovated in 1988, 1999, and 2002.

§ 1.1.1.2 The selected Contractor will assess each location, determine the condition of all Facilities, including but not limited to electrical systems, HVAC systems, of roof systems, and building enclosure systems, will assess the internal and external conditions of the Facilities, and will evaluate additional functions of the Facilities as determined by the Owner and is representatives (hereafter referred to as “Services”).

§ 1.1.1.3 The selected Contractor will provide the Owner with an assessment of the Facilities which:

- .1 Details the current condition of the Facilities;

- .2 Proposes a detailed plan for the continued maintenance of the Facilities;
- .3 Provides a timeline for contemplated maintenance projects at the Facilities;
- .4 Provides a budget for the work to be completed; and
- .5 Includes any other information requested by the Owner.

§ 1.1.1.4 The selected Contractor will have access to prior facilities maintenance assessment reports but shall not rely solely on the findings of the prior assessment reports in performing the Services under this Agreement.

§ 1.1.1.5 The selected Contractor shall present an initial assessment to the Owner's Facilities Committee and Board of Education. The presentation will take place over three (3) Facilities Committee meetings and two (2) Board of Education meetings. The Contractor shall incorporate any input, requests for refinements and revisions offered by the Facilities Committee or the Board of Education to the initial assessment before submitting its final assessment to the Owner.

§ 1.1.1.6 Prevailing wage rates do not apply to this Project.

§ 1.1.2 The selected Contractor shall commence with the Services immediately after the execution of the Agreement. The initial assessment shall be ready for presentation to the Facilities Committee and the Board of Education sixty (60) days after the execution of the Agreement. The final assessment shall be completed and returned to the Owner sixty (60) days after the final presentation of the initial assessment to the Facilities Committee and the Board of Education.

§ 1.1.3 Design Professional.

§ 1.1.3.1 There will be no separate Design Professional for this Project. To the extent professional design services are required to perform the Services, the selected Contractor will be responsible for providing those services.

§ 1.2 RFP Materials. The following materials have been distributed with this Request for Proposals, all of which are incorporated into this Request for Proposals as if rewritten fully herein:

§ 1.2.1 Proposal Form

§ 1.2.2 Facilities Maintenance Plan Advisor Agreement

Article 2 — Proposal Submission and Selection Process

§ 2.1 Pre-Proposal Meeting. The Owner will conduct one pre-proposal meeting on Thursday, April 21, 2022 at 12:00 p.m. at the Graham conference Room at Mills Lawn Elementary, 200 S. Walnut Street, Yellow Springs, OH. Maintenance personnel will be available for questions at the pre-proposal meeting and a walkthrough of the Facilities will also be provided.

§ 2.2 Preparation of Proposals.

§ 2.2.1 The completed Proposal should include a completed Proposal Form and additional materials prepared by the Proposer to provide the Owner information

regarding the Proposer's qualifications, consistent with the Evaluation Criteria set forth in Section 2.4.3.

§ 2.2.1.1 Proposal Form.

- .1 Complete all blank spaces on the Proposal 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 Proposer and determine the correct amount.
- .2 For purposes of effective comparison between Proposers, Proposer should base its pricing in its Proposal Form on the Scope of Services provided in the draft Agreement included in the RFP Materials. Proposer may propose additions, deletions, or modifications to the Scope of Services for the Owner's consideration and clearly identify the corresponding adjustment to the Proposer's pricing in the event the Owner agrees to the modified scope of services. Proposer must submit such proposed modifications in an attachment to the Proposal Form. Modifications will be accepted in the Owner's sole discretion.

§ 2.2.1.2 Additional Materials. The additional materials provided in response to Section 2.4.3 should be limited to twenty (20) pages.

§ 2.2.2 Submit one completed Proposal to the Owner in either hard copy or electronic form prior to the Response Deadline.

§ 2.2.2.1 If submitting a Proposal in hard copy, enclose the Proposal in a sealed opaque envelope with the Proposer's name and title of Project printed in the upper left hand corner and addressed to:

Yellow Springs Exempted Village School District
Attn: Dr. Terri L. Holden, Superintendent
201 South Walnut Street
Yellow Springs, OH 45387

If submitting a Proposal electronically, combine all Proposal documents into one PDF file, named with the Proposer's name and title of the Project, and submit via email to: Dr. Terri L. Holden, Superintendent, at tholden@ysschools.org.

§ 2.3 Opening of Proposals. Proposals will be accepted until the Response Deadline. Each Proposer is responsible for ensuring that its Proposal is received by the Owner in accordance with this Request for Proposals by the Response Deadline. The Owner reserves the right to accept a Proposal after the Response Deadline in its sole discretion.

§ 2.4 Evaluation of Proposals.

§ 2.4.1 Standard of Award. The Owner intends to award the contract for the Services to the Proposer submitting the Proposal determined to be in the Owner's best interest (the "Selected Proposer"), with price being considered, but not being the determining factor. The Owner reserves the right to negotiate pricing for the Services with the Selected Proposer.

§ 2.4.2 Clarification of Proposals. The Owner reserves the right to discuss the contents of the Proposal with the Proposer and request additional information from the Proposer.

§ 2.4.3 Evaluation Criteria. The Owner, in its sole discretion, will evaluate the Proposers and Proposals to determine which Proposal is in the Owner's best interest. In making such determination, the Owner may consider the following criteria, and any such other criteria as it determines proper:

§ 2.4.3.1 Proposer's work history.

- .1** Proposer 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 Proposer's management (i.e., president, chairman of the board, or any director) operates or has operated another company, Owner may consider the work history of that company in determining Proposer's qualifications and experience.
- .2** Each Proposer shall submit examples of facility maintenance plans submitted to owners of other projects.
- .3** Owner will consider Proposer's prior experience on other projects for Owner, including Proposer's demonstrated ability to complete its work on these projects in accordance with the Contract Documents and on time and its ability to work with Owner.
- .4** Proposer authorizes Owner and its representatives to contact the owners and design professionals on projects on which Proposer has worked, and authorizes and requests such owners and design professionals to provide Owner with a candid evaluation of Proposer's performance. By submitting its proposal, Proposer 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 candidate evaluation and such action is not successful, Proposer 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.

§ 2.4.3.2 Proposer'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 Proposer's work force.

§ 2.4.3.3 Proposer's compliance with federal, state, and local laws, rules, and regulations, including but not limited to the Occupational Safety and Health Act.

§ 2.4.3.4 The foregoing information with respect to any of the subcontractors that Proposer intends to use on the Project.

§ 2.4.3.5 Proposer'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.

§ 2.4.4 By submitting its Proposal, the Proposer agrees that Owner's determination of which Proposal is in the best interest of Owner will be final and conclusive, and that if the Proposer, or any person at Proposer's urging, directly or indirectly challenges such determination in any legal proceeding and such challenge is not successful, Proposer will reimburse Owner for all legal fees and expenses incurred by Owner that are related to such challenge, including the cost of collection.

§ 2.5 Negotiation of Contract.

§ 2.5.1 The Owner will negotiate a contract with the Selected Proposal.

§ 2.5.2 A copy of the Agreement and associated Contract Documents that will be used for the Project have been provided with this Request for Proposals.

§ 2.5.2.1 If the Proposer would like to propose any modifications to the Agreement or other Contract Documents provided with this Request for Proposals, the Proposer must submit with its Proposal its proposed modification language with specificity (identifying paragraph numbers and language changes) on a separate page titled "Proposed Modifications to the Agreement." Any proposed modifications may be taken into account in determining whether the Proposal is in the best interest of the Owner and any modifications will be made in the Owner's sole discretion.

§ 2.5.3 If, for any reason the Owner and Selected Proposer are unable to conclude negotiation of the contract, the Owner may suspend negotiations with the Selected Proposer and initiate negotiations with the next Proposer determined to be in the Owner's best interest, and so on, until the contract is awarded, or the Owner terminates this Request for Proposals.

Article 3 — Additional Instructions

§ 3.1 Questions.

§ 3.1.1 All questions must be submitted in writing to Dr. Terri L. Holden, Superintendent, tholden@ysschools.org. The Owner will email the answers to all Proposers.

§ 3.1.2 The Owner may also email other Project-related information to the Proposers.

§ 3.1.3 Addenda.

§ 3.1.3.1 Should any question prompt the Owner to amend the Request for Proposal, a notice will be sent to all Proposers. Addenda will be deemed to have been validly given if emailed or otherwise furnished to each Proposer's contact person of record.

§ 3.1.3.2 When an Addendum to this Request for Proposal is necessary less than three days before the Proposal deadline, the Owner may extend the Proposal deadline through an announcement via email. The Owner will make reasonable attempts to contact all Proposers.

§ 3.2 Proposal Certifications.

§ 3.2.1 By submitting a Proposal, the Proposer certifies to the Owner that:

§ 3.2.1.1 it has carefully reviewed the Facilities and RFP Materials to become familiar with the requirements for the Services and has included all costs necessary to provide labor and materials for the Services in its Proposal, including incidentals, whether or not specifically called for and to become familiar with the limitations and conditions related to the Services covered by the Proposal and has included in the Proposal a sum to cover the cost of such items;

§ 3.2.1.2 the Proposer is not the subject of an unresolved finding for recovery issued by the Auditor of State under ORC Section 9.24;

§ 3.2.1.3 the Proposer is not debarred under ORC Section 153.02;

§ 3.2.1.4 the Proposer has not been found by a court to be in default of a judgment or breach of settlement agreement; and

§ 3.2.1.5 the Proposer has not violated ORC Section 3517.102 by exceeding allowable campaign contributions.

§ 3.3 Cancellation and Rejection; Waiver of Minor Errors.

§ 3.3.1 The Owner may reject all Proposals and cancel all or any portion of this solicitation at any time for any reason. The Owner will have no liability to any Proposer arising out of any cancellation of this solicitation or rejection of any related submission.

§ 3.3.2 The Owner shall reject a Proposal if the Owner determines that:

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

§ 3.3.2.2 the recommended Proposer is debarred under ORC Section 153.02;

§ 3.3.2.3 the recommended Proposer has violated ORC Section 3517.102 by exceeding allowable campaign contributions; or

§ 3.3.2.4 the Owner has determined that the Proposer intended to engage in collusion with intent to defraud or other illegal practices.

§ 3.3.3 The Owner may waive minor errors that do not change the results of a selection.

§ 3.4 Proposal Revision. The Owner may request a Proposer submit a revised Proposal to clarify any questions which may arise while evaluating the Proposals. If the Owner requests a clarification of any Proposal, the Proposer must submit the clarification in writing to the Owner within three (3) business days.

§ 3.5 Proposal Withdrawal. If the Selected Proposer withdraws its proposal after selection, the Owner may award of the Contract to the firm next determined to be in the Owner's best interest.

§ 3.6 Applicable Law and Forum. The rights of any Proposer or any party to a subsequent Contract 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 Proposal or any subsequent Contract. The Proposer irrevocably consents to that jurisdiction.

§ 3.7 Public Records. Pursuant to ORC Section 9.28, documents submitted to the Owner in response to this Request for Proposal will not be available for public inspection under ORC Section 149.43 until after the Owner either enters into a contract for the Services or cancels this Request for Proposals.

Proposal Form

Proposal Form

Proposer's Name: _____
Proposer's Address: _____
Principal Contact: _____
Telephone Number: _____
Federal Tax ID Number: _____
Date Submitted: _____

Article 1 — Pricing Proposal

1.1 Price. The Proposer will perform all Services required under the Facilities Maintenance Plan Advisor Agreement (the "Agreement") for the sum of:

Dollars	\$
_____	_____
<i>Amount in Words</i>	<i>Amount in Numerals</i>

1.2 If Proposer is submitting proposed modifications to the Scope of Services included in the draft Agreement included in the RFP Materials, attach a list of proposed modifications and corresponding price adjustments, to this Proposal Form as an exhibit.

Article 2 — Addenda

2.1 Receipt of the following Addenda is hereby acknowledged:

Addendum No. _____	Date: _____
Addendum No. _____	Date: _____
Addendum No. _____	Date: _____

Article 3 — Acknowledgements & Information

3.1 Proposer hereby acknowledges that the following representations in this proposal are material and not mere recitals:

3.1.1 Proposer has read and understands the Agreement and agrees to comply with all requirements of the Agreement.

3.1.2 Proposer represents that the Proposal is based upon the requirements of the Agreement.

3.1.3 Proposer, and each person signing on behalf of Proposer, certifies, under penalty of perjury, that to the best of the undersigned's knowledge and belief:

3.1.3.1 The Pricing Proposal amount has been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such price;

3.1.3.2 Unless otherwise required by law, the Pricing Proposal has not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to the Response Deadline, directly or indirectly, to any other Proposer; and

3.1.3.3 No attempt has been made or will be made by the Proposer to induce any other individual, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

3.1.4 Proposer will enter into and execute the Agreement with the Owner that is awarded on the basis of this Proposal.

3.1.5 Proposer certifies that the upon the award of the Agreement, the Proposer will ensure that all of the Proposer's employees, while working at the Facilities, will not purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way.

3.1.6 Proposer agrees to furnish any information requested by the Owner to evaluate the experience, resources, and qualifications of the Proposer.

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

Signed and Submitted:

Proposer's Name

By: _____
Signature

Printed Name & Title

Date

Draft Agreement

Facilities Maintenance Plan Advisor Agreement

Owner: **Yellow Springs Exempted
Village School District**

201 South Walnut Street
Yellow Springs, OH 45387

**Owner's
Principal
Contact:** **Terri L. Holden,
Superintendent**
 tholden@ysschools.org

Project: **Facilities Maintenance Plan
Advisor**

Provider:

**Provider's
Principal
Contact:**

Phone: _____
Email: _____

The Owner and Provider hereby agree, effective as of the date this **Owner-Provider Agreement** (this "**Agreement**") is executed by the Owner (the "**Effective Date**"), as set forth below:

Article 1 — Provider's Services

§ 1.1. Scope of Services. Provider will, in accordance with this Agreement and the Terms and Conditions attached hereto as **Exhibit A**, provide the services identified in the Project Scope of Services as described in the RFP and attached hereto as **Exhibit B**.

Article 2 — Compensation

§ 2.1. Compensation for Initial Term. The Provider's total compensation due for the Provider's proper, timely, and complete performance of the Provider's Services shall be \$_____
(the "**Contract Sum**").

Article 3 — Contract Documents

§ 3.1. The Agreement between the parties consists of this Owner-Provider Agreement and the following documents, which are hereby incorporated into this Agreement as if fully rewritten herein:

§ 3.1.1. The Provider Terms and Conditions attached hereto as **Exhibit A**;

§ 3.1.2. The Owner's Request for Qualifications issue on and hereto as **Exhibit B**.

This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

In witness hereof, the parties hereby accept and have executed this Agreement:

**YELLOW SPRINGS SCHOOL EXEMPTED VILLAGE
DISTRICT BOARD OF EDUCATION**

«PROVIDER»

Signature

Signature

Printed Name, Title

Printed Name, Title

Date

Date

**CERTIFICATE OF AVAILABILITY OF FUNDS
(ORC Section 5705.41)**

The undersigned, Fiscal Officer of the Owner, hereby certifies in connection with the preceding Agreement that the amount required to meet the obligation under the Agreement for the services in the fiscal year in which this Agreement is made 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.

Date

Fiscal Officer

Exhibit A – Terms & Conditions

Article 1 – Provider's Responsibilities

§ 1.1. The Provider shall perform its services consistent with the professional skill and care ordinarily provided by professionals licensed to perform the Provider's Services practicing in the same or similar locality of the Project with above-average experience in projects similar to the Project (the "Standard of Care"). The Provider shall perform its services as expeditiously as is consistent with its Standard of Care and the orderly progress of the Project.

§ 1.2. In providing the Provider's Services, the Provider shall comply with all federal, state, and local laws, regulations, and orders applicable to the Provider's Services and shall prepare any drawings, specifications, or other deliverable in conformity with all such statutes, regulations, ordinances, and orders, except to the extent that the Provider has advised the Owner in writing of an ambiguity in any such statutes, regulations, ordinances, and orders.

§ 1.3. Provider warrants and represents that the Provider and all of its subcontractors and subconsultants, if any, presently have, and will at all times while performing the Provider's Services maintain: (i) all skills, experience, knowledge, staffing and resources necessary to perform the Provider's Services, and (ii) all required licenses, accreditations, certifications and registrations necessary to perform the Provider's Services.

§ 1.4. The Provider shall keep the owner apprised of its progress on the Project.

§ 1.5. The Provider shall provide copies of all deliverables to the Owner in the format and manner which the Owner reasonably requests, including, but not limited to, the submission of such deliverables via any project management software utilized by the Owner.

§ 1.6. **No Design Professional.** There is no Design Professional for this Project. All Design Professional services needed for the project shall be provided by Provider. In doing so, the Provider shall use its best efforts, best skills, and best judgment in providing architectural, engineering, and/or other design services for the Project in accordance with the professional standards and quality expected of design professionals licensed to practice in Ohio with experience with projects similar in design and function to that of the Project.

Article 2 – Compensation & Payment

§ 2.1. Provider shall submit one invoice to the Owner each month for Provider's Services as set forth in the Agreement.

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

§ 2.2.1. Provider'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;

§ 2.2.2. Provider's default or failure to perform any of its obligations under another contract that it has with Owner;

§ 2.2.3. The filing of third party claims, or reasonable evidence that third party claims have been or will be filed;

§ 2.2.4. The Work has not proceeded to the extent set forth in the application for payment;

§ 2.2.5. Any representations made by Provider are untrue;

§ 2.2.6. The failure of Provider to make payments to its Subcontractors;

§ 2.2.7. Damage to Owner's property or the property of another person or laborer; or

§ 2.2.8. Liens filed or reasonable evidence indicating the probable filing of such liens.

§ 2.3. Owner will pay Provider within 30 days after Owner's approval of the Provider's invoice, provided that the invoice has been properly submitted on a timely basis and is accompanied by all of the requested documentation.

§ 2.4. If requested by the Owner, Provider shall submit all documentation so requested by the Owner to support the Provider's invoice.

§ 2.5. The making of any payment, including final payment, by Owner does not constitute a waiver of claims by Owner for the following:

§ 2.5.1. Liens, claims, security interests, or encumbrances arising out of the Contract Documents that are unsettled;

§ 2.5.2. Errors or omissions of the Provider in providing the Provider's Services;

§ 2.5.3. Other acts or omissions of the Provider which violate the Provider's Standard of Care; or the provision of the Provider's Services;

§ 2.5.4. Claims for Indemnification;

§ 2.5.5. Claims about which Owner has given Provider written notice; or

§ 2.5.6. Claims arising after Final Payment.

Article 3 — Insurance & Indemnification

§ 3.1. Provider's Insurance.

§ 3.1.1. Provider shall secure and maintain through the full period of the Agreement, and for four (4) years following final completion of the Project, insurance in at least the following limits of coverage:

§ 3.1.1.1. Commercial General Liability, including completed operations, contractual liability, and protective liability insurance if any of the services or work provided are performed by others, in an amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.

§ 3.1.1.2. Automobile Liability, covering all owned, non-owned, and hired automobiles used in connection with the Project, with a minimum limit of \$1,000,000 for bodily injury (including death) and \$1,000,000 combined single limit.

§ 3.1.1.3. Workers Compensation and Employers' Liability Insurance, as required by Ohio law.

§ 3.1.1.4. Professional Liability Insurance for protection of claims arising out of the performance of any design, commissioning, and/or engineering services performed or furnished by Provider for the Project for which the Provider may become legally liable, in a minimum amount of \$1,000,000 coverage, unless the Owner agrees to a lesser amount.

§ 3.1.2. Provider will, upon request, provide a certificate of such insurance coverage with the Owner or its authorized representative.

§ 3.1.3. The costs of insurance required for the Project and provided by Provider are included in the Provider's compensation.

§ 3.1.4. The Owner, and any other party reasonably requested by the Owner (the "Additional Insureds"), shall be named as an additional insured on the commercial general and automobile liability policies.

§ 3.1.5. The Owner shall be given a minimum of thirty (30) days written notice by the provider of each insurance policy of any change in coverage, including cancellation.

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

§ 3.3. Indemnification.

§ 3.3.1. To the maximum extent permitted by law, Provider shall indemnify and hold harmless the Owner and Additional Insureds, and the agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' and Providers' fees, arising out of or related to the performance of the Provider's Services, including but not limited to the failure of Provider to perform its obligations under the Agreement, 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 Provider to perform in accordance with the Agreement, and/or claims related to the removal, handling, or use of any hazardous materials.

§ 3.3.2. Owner may set off amounts equal to any sums for which it is entitled to be indemnified from the amounts otherwise due Provider under the Agreement.

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

Article 4 — Default of Provider

§ 4.1. Events of Default. Each of the following constitutes an event of default of Provider:

§ 4.1.1. Provider's failure to perform any of its obligations under the Contract Documents and to proceed to commence to correct such failure within 2 business days after written notice thereof from Owner or such lesser time as is provided in the Contract Documents, or

§ 4.1.2. Provider's failure thereafter to use its best efforts to correct such failure, or

§ 4.1.3. Except when an extension of time is granted in writing by Owner, to correct such failure within 30 days after receipt of written notice thereof.

§ 4.1.4. Provider's failure to pay its obligations as they become due or Provider's insolvency.

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

§ 4.2.1. Order Provider to stop the Work, which Provider must do immediately;

§ 4.2.2. 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 Provider;

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

§ 4.3. 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 Provider.

§ 4.4. Payments Due Provider. 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 will be paid to Provider. If such costs exceed the unpaid balance, Provider is responsible to pay the difference to Owner. The obligations under this section will survive termination of this Agreement.

Article 5 — Default of Owner

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

§ 5.1.1. Failure of Owner to perform any of its obligations under the Contract Documents and to correct such failure within 30 days after receipt of written notice thereof from Provider specifying the default and the necessary corrective action.

§ 5.2. Provider's Remedy.

§ 5.2.1. Provider's sole and exclusive remedy for the default of Owner, other than the failure of Owner to pay Provider, will be to bring a suit for damages in the Common Pleas Court for the county in which the Project is located. Provider'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.

§ 5.2.2. If Owner fails to pay Provider as payment becomes due, Provider may, upon 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 Article 9.1.

Article 6 — Suspension or Termination for the Convenience of Owner

§ 6.1. Suspension for the Convenience of Owner.

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

§ 6.1.2. 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 10% of the amount of the increased cost not attributable to profit or overhead. No adjustment will be made to the extent that:

§ 6.1.2.1. performance is, was or would have been so suspended, delayed or interrupted by another cause for which Provider is responsible; or

§ 6.1.2.2. an equitable adjustment is made or denied under another provision of this Agreement.

§ 6.2. Termination for the Convenience of Owner.

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

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

§ 6.2.3. If this Agreement is terminated for Owner's convenience and without cause and there exists no event of Provider's default, as defined in this Agreement, Provider will be entitled to receive payment for Work properly executed, including reasonable costs for work necessary to protect and preserve the Work.

§ 6.2.4. If this Agreement is terminated for Owner's convenience and without cause and there exists an event of Provider's default, as defined in this Agreement, Provider 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.

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

Article 7 — Claims & Disputes

§ 7.1. Notice of Claims. Provider shall provide written notice to the Owner of any claim within five (5) days of occurrence of the event giving rise to the Provider's claim. The Provider hereby irrevocably waives any claim not brought in accordance with the provisions of this Article 5.

§ 7.2. Mediation.

§ 7.2.1. Any claim, dispute, or other matter in question arising out of or related to the Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 7.2.2. The parties will endeavor to mutually agree on a mediator or mediators and procedures to govern the mediation, or, in the absence of such agreement, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect.

§ 7.2.3. The parties will share the mediator's fees equally.

§ 7.2.4. In the event the claim cannot be resolved by mediation, the claim may proceed to arbitration, as set forth below.

§ 7.3. Settlement Offers. The Provider 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 Provider's Claim is dismissed or found to be without merit, or if the damages awarded to the Provider on its Claim do not exceed the Owner's last settlement offer, the Provider 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.

Article 8 — Miscellaneous

§ 8.1. Limitation on Liability. Owner's total liability under this Agreement is limited to the amount set forth in the Treasurer's certificate at the end of this Agreement. Under no circumstances will the elected officials, officers, employees, board members, or agents of Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

§ 8.2. Project Safety. Provider 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, Provider 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 Provider.

§ 8.3. Governing Law & Venue. The Agreement shall be governed by the law of the place where the Project is located. Any suit, which may be brought to enforce any provision of the Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court in the county in which the Project is located, and each party hereby expressly consents to the jurisdiction of such court. The parties expressly waive the right to remove any litigation arising out of the Agreement to federal court.

§ 8.4. Notices. A Notice is any written notice to the Owner or the Provider.

§ 8.4.1. Notice to the Provider shall be deemed to have been duly served if delivered in person to an officer or any other official of the Provider or if delivered to or sent by registered or certified mail, return receipt requested or electronic email, to the Provider's address or email address provided in the Agreement.

§ 8.4.2. Notice to the Owner shall be deemed to have been duly served if delivered to or sent by registered or certified mail, return receipt requested, to the Owner's address provided in the Agreement.

§ 8.5. Modification. No modification or waiver of any of the terms of the 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 the Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in the Agreement.

§ 8.6. Partial Invalidity. If any term or provision of the 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, the Agreement will remain in full force and effect and such term will be deemed stricken; provided the Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

§ 8.7. Assignment. The Agreement shall not be assigned in whole or in part, including the right to payments, by the Provider without the Owner's prior written consent.

§ 8.8. Construction. The parties acknowledge that each party has reviewed the Agreement and voluntarily entered into the 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 the Agreement, or any amendments or exhibits to it.

§ 8.9. Captions. The captions denoting each article of the Agreement and exhibits shall have no application in the interpretation thereof; the language of the Article shall be fully controlling.

§ 8.10. Equal Opportunity. Provider 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. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination. Provider 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.

§ 8.11. Use of Owner's Facilities.

§ 8.11.1. Provider 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:

§ 8.11.1.1. use Owner's cafeteria, rest rooms, or phones;

§ 8.11.1.2. use or bring any alcoholic beverages, controlled substances, or firearms on any property owned by Owner;

§ 8.11.1.3. use any radios, tape or compact disc players, or sound amplification equipment; and

§ 8.11.1.4. initiate or react to any visible or audible actions toward students, teachers, or staff members of Owner. Owner will not tolerate any such actions and any such action observed or made known to Owner will be dealt with severely.

§ 8.11.2. Provider 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 Provider's employees, and the employees of Provider's Subcontractors and materialmen, regardless of tier, of such prohibitions. The notice must be in a form acceptable to Owner.