

BIDDING DOCUMENTS



OWNER

BERKSHIRE LOCAL SCHOOL DISTRICT BOARD OF EDUCATION

PROJECT

PRE-K MODULAR PROJECT – SITE UTILITIES PACKAGE

14155 Claridon Troy Road

Burton, Ohio 44021

DESIGN PROFESSIONAL

SCHORR ARCHITECTS, INC.

230 Bradenton Avenue

Dublin, Ohio 43017

INSTRUCTIONS TO BIDDERS

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A. BIDDER'S PLEDGE AND AGREEMENT

1. Each Bidder acknowledges that this is a public project involving public funds and that the Owner expects and requires that each successful Bidder adhere to the highest ethical and performance standards. Each Bidder by submitting a bid pledges and agrees that (a) it will act at all times with absolute integrity and truthfulness in its dealings with the Owner and the Design Professional, (b) it will use its best efforts to cooperate with the Owner and the Design Professional and all other Contractors on the Project and at all times will act with professionalism and dignity in its dealings with the Owner, Design Professional, and other Contractors, (c) it will assign only competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her, and (d) it has read, understands and will comply with the terms of the Contract Documents.

B. EXAMINATION OF CONTRACT DOCUMENTS AND SITE CONDITIONS AND RELIANCE UPON TECHNICAL DATA

1. Each Bidder shall have a competent person carefully and diligently review each part of the Contract Documents, including the Divisions of the Specifications and parts of the Drawings that are not directly applicable to the Work on which the Bidder is submitting its bid. By submitting its bid, each Bidder represents and agrees, based upon its careful and diligent review of the Contract Documents, that it is not aware of any conflicts, inconsistencies, errors, or omissions in the Contract Documents for which it has not notified the Design Professional in writing at least ten (10) days prior to the bid opening. If there are any such conflicts, inconsistencies, errors, or omissions in the Contract Documents, the Bidder (i) will provide the labor, equipment, or materials of the better quality or greater quantity of Work and/or (ii) will comply with the more stringent requirements. The Bidder will not be entitled to any Change Order, additional compensation, or additional time on account of such conditions for any conflicts, inconsistencies, errors, or omissions that would have been discovered by such careful and diligent review, unless it has given prior written notice to the Design Professional.
2. Each Bidder shall have a competent person carefully and diligently inspect and examine the entire site and the surrounding area, including all parts of the site applicable to the Work for which it is submitting its bid, including location, condition, and layout of the site and the location of utilities, and carefully correlate the results of the inspection with the requirements of the Contract Documents. The Bidder's bid shall include all costs attributable to site and surrounding area conditions that would have been discovered by such careful and diligent inspection and examination of the site and the surrounding area, and the Bidder shall not be entitled to any Change Order, additional compensation, or additional time on account of such conditions.
3. The Bidder may rely upon the general accuracy of any technical data identified in the Owner-Contractor Agreement (e.g., any soils exploration reports, soil boring logs, site survey, or abatement reports) in preparing its bid, but such technical data are not part of the Contract Documents. Except for the limited reliance described in the preceding sentence, Bidder may not, if awarded a contract for the Work, rely upon or make any Claim against the Owner or Design Professional, or any of their agents or employees, with respect to any of the following:
 - (a) the completeness of such reports and drawings for Bidder's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the successful Bidder and safety precautions and programs incident thereto; or

- (b) any interpretation by the successful Bidder of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Bidder to estimate locations or quantities of subsurface strata are independent factual assumptions, which Owner does not warrant.
4. Each Bidder will be deemed to have actual knowledge of all information provided or discussed at the pre-bid meeting.

C. PROJECT

1. The Project is the **Berkshire Local Schools – Pre-K Modular Project – Site Utilities Package** (“the Project”). The Project consists of the work indicated by the Contract Documents, in accordance with the Drawings and Specifications prepared by the Design Professional.
2. Federal Davis-Bacon Prevailing Wage Rates do not apply to this Project.
3. The Design Professional for the Project is:

Schorr Architects, Inc.
230 Bradenton Avenue
Dublin, Ohio 43017
Design Professional Representative: Larry Rancour, Vice President
Email: lrancour@schorrarchitects.com

D. WORK

1. Only one contract will be issued by the Owner for constructing the Project, the General Contract, which will cover all scopes of work necessary to construct the Project.
2. The Contractor awarded the General Contract (General Contractor) will be responsible for the performance and coordination of any and all subcontractors and suppliers either directly or indirectly contracted with the General Contractor.
3. Owner may provide Bidders access to the Project site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations and Owner’s policies relative to excavation and utility locates. Bidders must follow COVID-19 safety protocols required by law or requested by the Owner. Bidders may visit the site by contacting **John Stoddard, Superintendent, at john.stoddard@berkshireschools.org** to set an appointment.

E. ESTIMATE OF COST

The total estimated construction cost for the base bid is **\$525,000.00**.

F. CONTRACT DOCUMENTS AND PRE-BID MEETING

1. The Contract Documents consist of the Contract Documents listed in Section 1 of the Owner-Contractor Agreement.
2. Electronic copies of the Contract Documents will be available by request, from **Larry Rancour, Senior Project Manager, at lrancour@schorrarchitects.com**.

3. Hard copies of the plans and specifications will be available for non-refundable purchase from DC Reprographics, at their website (<https://www.dcplanroom.com/>).
4. Bidders shall use complete sets of Contract Documents in preparing bids. Neither the Owner nor the Design Professional assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.
5. The Owner or the Design Professional, in making the Contract Documents available on the above terms, does so only for the purpose of obtaining bids on the Work and does not confer a license or grant for any other use.
6. A pre-bid conference will be held on **July 24, 2024 at 11:00 a.m.** at door 9 of the District's campus located at 14155 Claridon Troy Road, Burton, Ohio 44021.

Attendance is highly recommended. The Owner shall not be held liable if a bidder is unable to attend due to technical or other issues or obstructions.

G. PREPARATION OF BIDS

1. All bids must be submitted on the "Bid Form" furnished with the Contract Documents.
2. All blank spaces shall be filled in, in ink or typewritten, in words and figures, and in figures only where no space is provided for words, and signed by the Bidder. The wording on the Bid Form shall be used without change, alteration, or addition. Any change in the wording or omission of specified accompanying documents may cause the bid to be rejected. If there is an inconsistency or conflict in the bid amount, the lowest amount shall control, whether expressed in numbers or words.
3. Bidders shall note receipt of Addenda on the Bid Form. If the Bidder fails to acknowledge receipt of each Addendum, the Bid shall be deemed non-responsive, unless the Bid amount clearly and unambiguously reflects receipt of the Addendum or the Addendum involves only a matter of form and does not materially affect the price, quantity or quality of the Work to be performed.
4. Each Bidder shall submit **2 originals** of its bid to the Owner. The Bid Form shall be signed with the name typed or printed below the signature. A Bid shall not be submitted by facsimile transmission or any other electronic means. A Bidder that is a corporation shall sign its bid with the legal name of the corporation followed by the name of the state of incorporation and the legal signature of an officer authorized to bind the corporation to a contract.
5. Bids shall be enclosed in a sealed opaque envelope with the Bidder's name, plainly marked on the outside "**BERKSHIRE LSD – PRE-K MODULAR – SITE UTILITIES PACKAGE PROJECT**" and addressed as follows:

**Berkshire Local School District Board of Education
ATTN: Beth McCaffrey, Treasurer
14155 Claridon Troy Road
Burton, Ohio 44021**

Bids must be received at the location designated above before **12:00 P.M., local time August 5, 2024.**

Hand deliveries to the Owner at this location are preferred. Hand deliveries may be made during the Owner's standard operating hours and must be made before the deadline. Respondents are responsible for confirming current operating hours.

A public bid opening will take place immediately after the time for submitting bids is expired.

The Owner shall not be held liable if a bidder is unable to attend due to technical or other issues or obstructions.

6. **The completed Bid Form shall be accompanied by the following completed documents:**
Bid Guaranty and if applicable, Contract Bond (See Paragraph G.8 below.)
Contractor's Qualification Statement (See Paragraph H.4 below.)
7. The Bidder shall take the following precautions in preparing its bid:
- a. Sign the bid and check to ensure all blank spaces have been filled in with requested information and that the specified accompanying documents (listed in Paragraph G.6 above) have been included in a sealed opaque envelope addressed as described in item Paragraph G.5 above.
 - b. When the Bid Form provides for quoting either an addition or deduction for an Alternate item, indicate whether the sum named is an addition or deduction. If it is not indicated, it will be conclusively presumed that the amount is a deduction.
 - c. When the Bid Form provides for quoting a unit price, the Bidder should quote the unit price as set forth in the Contract Documents and as described in Paragraph L.1 below.
 - d. When applicable, make sure that the Bid Guaranty is properly executed and signed by:
 - 1) The Bidder
 - 2) The Surety or Sureties
 - e. Make sure that the amount of the Bid Guaranty (if the Bid Guaranty is in the form of a certified check, letter of credit, or cashier's check) is for a specific sum in an amount as instructed in Paragraph G.8.a below. If the Bid Guaranty is in the form of the Bid Guaranty and Contract Bond, the amount may be left blank; if an amount is inserted, it must equal the total of the base bid plus the amount of all add alternates included in the bid. If inserted, then the failure to state an amount equal to the total of the base bid and all add alternates shall make the bid non-responsive if the Owner selects alternates not included in the amount.
 - f. Make sure that the appropriate bid package and scope of work is inserted in the correct space on the Bid Guaranty and Contract Bond Form. Failure to include work covered by the bid submitted may make the bid non-responsive.
8. Bonds and Guarantees
- a. **Bid Guaranty:** Bidder shall furnish a Bid Guaranty, in the form prescribed in Sections 153.54, 153.57, and 153.571 of the Ohio Revised Code, in the form of either: (1) a bond for the full amount of the Base Bid plus the amount of all Add Alternates included in the Bidder's bid, in the form of the Bid Guaranty and Contract Bond included in the Contract Documents; or (2) a certified check, cashier's check, or irrevocable letter of credit in a form satisfactory to the Owner in an amount equal to 10% of the bid. Bid amount shall be the total of all sums bid, including all add alternatives, but excluding all deduct alternatives. NOTE: AIA or EJCDC Bid Bond forms are not acceptable.
 - b. **Contract Bond:** The successful Bidder, who, as a Bid Guaranty, submits a certified check, cashier's check, or irrevocable letter of credit in an amount equal to 10% of the bid, shall furnish a Contract Bond in the form Contract Bond included in the Contract Documents in an amount equal to 100% of the Contract Sum. NOTE: AIA or EJCDC Bond forms are not acceptable.

- c. The bond must be issued by a surety company authorized by the Ohio Department of Insurance to transact business in the State of Ohio and acceptable to the Owner. The bond must be issued by a surety capable of demonstrating a record of competent underwriting, efficient management, adequate reserves, and sound investments. These criteria will be deemed to be met if the surety currently has an A.M. Best Company Policyholders Rating of "A-" or better and has or exceeds the Best Financial Size Category of Class VI. Other sureties may be acceptable to the Owner, in its sole discretion
- d. All bonds shall be signed by an authorized agent of an acceptable surety and by the Bidder.
- e. Surety bonds shall be supported by credentials showing the Power of Attorney of the agent, a certificate showing the legal right of the Surety Company to do business in the State of Ohio, and a financial statement of the Surety.
- f. The Bid Guaranty, as applicable, shall be in the name of or payable to the order of the Owner.
- g. The name and address of the Surety and the name and address of the Surety's Agent should be typed or printed on each bond.

H. METHOD OF AWARD

1. **All bids shall remain open for acceptance for sixty (60) days** following the day of the bid opening, but the Owner may, in its sole discretion, release any bid and return the Bid Guaranty prior to that date. The Bid Guaranty shall be subject to forfeiture, as provided in the Ohio Revised Code, if a bid is withdrawn during the period when bids are being held.
2. The Owner reserves the right to reject any, part of any, or all bids and to waive any informalities and irregularities. The Bidder expressly acknowledges this right of the Owner to reject any or all bids or to reject any incomplete or irregular bid. Bidders must furnish all information requested on or accompanying the Bid Form. Any false representations or failure to provide information may result in disqualification of the bid.
3. Determination of the Lowest Responsible Bid. Subject to the right of the Owner to reject any or all bids, the Owner will award the Contract for the Work to the bidder submitting the lowest responsible bid that is responsive to the bidding requirements, taking into consideration accepted alternates. In evaluating bids, the Owner may consider the qualifications of the Bidders, whether or not the bids comply with the prescribed requirements, and alternates and unit prices, if requested, on the Bid Form. The Owner may also consider the qualifications and experience of subcontractors and suppliers. The Owner may conduct such investigations as are deemed necessary to establish the qualifications and financial ability of the Bidder and its subcontractors and suppliers. The factors the Owner may consider in determining which bid is the lowest responsible include the factors set forth below. The Owner, in its discretion, may consider and give such weight to these criteria as it deems appropriate.
 - a. The Bidder's work history. The 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 the Owner's Project, on time and in accordance with the applicable Contract Documents, and based upon the Bidder's claims history. If the Bidder's management operates or has operated another construction company, the Owner may consider the work history of that company in determining whether the Bidder submitted the lowest responsible bid.

The Owner will consider the Bidder's prior experience on other projects of similar scope and/or complexity including prior projects with the Owner and/or Design Professional, including the Bidder's demonstrated ability to complete its work on these projects in accordance with the Contract Documents and on time, and will also consider its ability to work with the Owner and Design Professional as a willing, cooperative, and successful

team member. Bringing overstated claims, an excessive number of claims, acting uncooperatively, and filing lawsuits against project owners and/or their design professionals on prior projects of similar scope and/or complexity will be deemed evidence of a Bidder's inability to work with the Owner and Design Professional as a willing, cooperative, and successful team member.

The Bidder authorizes the Owner and its representatives to contact the owners and design professionals (and construction managers, if applicable) on projects on which the Bidder has worked and authorizes and requests such owners and design professionals (and construction managers) to provide the Owner with a candid evaluation of the Bidder's performance. By submitting its bid, the Bidder agrees that if it or any person, directly or indirectly, on its behalf or for its benefit brings an action against any of such owners or design professionals (or construction managers) or the employees of any of them as a result of or related to such candid evaluation, the Bidder will indemnify and hold harmless such owners, design professionals (and construction managers) and the employees of any of them from any claims, whether or not proven, that are part of or are related to such action and from all legal fees and expenses incurred by any of them arising out of or related to such legal action. This obligation is expressly intended for the benefit of such owners, design professionals (and construction managers), and the employees of each of them.

- b. The Bidder's financial ability to complete the Contract successfully and on time without resort to its Surety.
- c. The Bidder's prior experience with similar work on comparable or more complex projects.
- d. The Bidder's prior history for the successful and timely completion of projects, including the Bidder's history of filing claims and having claims filed against it.
- e. The Bidder's equipment and facilities.
- f. The adequacy, in numbers and experience, of the Bidder's work force to complete the Contract successfully and on time.
- g. The Bidder's compliance with federal, state, and local laws, rules, and regulations, including but not limited to the Occupational Safety and Health Act, the Ohio Prevailing Wage laws, and Ohio ethics laws.
- h. The Bidder's participation in a drug-free workplace program acceptable to the Owner, and the Bidder's record for both resolved and unresolved findings of the Auditor of State for recovery as defined in Section 9.24 of the Ohio Revised Code.
- i. The Owner's prior experience with the Bidder's surety.
- j. The Bidder's interest in the Project as evidenced by its attendance at any pre-bid meetings or conferences for bidders.
- k. Depending upon the type of the work, other essential factors, as the Owner may determine and as are included in the Specifications.
- l. The number of years the Bidder has been actively engaged as a contractor in the construction industry.
- m. Financial responsibility demonstrated by the Bidder and whether Bidder possesses adequate resources and availability of credit, the means and ability to procure insurance and acceptable performance bonds required for the Project and whether any claims have been made against performance bonds secured by the bidder on other construction projects.
- n. The foregoing information with respect to each of the Subcontractors and Suppliers that the Bidder intends to use on the Project.

4. **Qualifications Statement.** Each Bidder will submit with its bid a completed Contractor Qualifications Statement, which is included with the Contract Documents, and thereafter provide the Design Professional promptly with such additional information as the Design Professional may request regarding the Bidder's qualifications. A Bidder shall submit any requested additional information within 24 hours of the date on the request.
5. The failure to submit requested information on a timely basis may result in the determination that the Bidder has not submitted the lowest responsible bid.
6. By submitting its bid, the Bidder agrees that the Owner's determination of which bidder is the lowest responsible bidder shall be final and conclusive, and that if the Bidder or any person on its behalf challenges such determination in any legal proceeding, whether or not proven, the Bidder will indemnify and hold the Owner and its employees and agents harmless from any claims included or related to such legal proceeding, whether or not proven, and from legal fees and expenses incurred by the Owner, its employees, or agents that arise out of or are related to such challenge.
7. **After bid opening, within 24 hours of a request made by the Owner or Design Professional, the apparent low Bidder and any other Bidder so requested must submit the following:**
 - a. **SUBCONTRACTORS:** For all subcontracts with an estimated value of at least \$20,000, a list of all Subcontractors that the Bidder will use to construct the Project, as well as an indication of whether or not the Bidder has ever worked with a proposed Subcontractor before, including the following information for the three most recent projects on which the Bidder and each Subcontractor have worked together:
 - Project Owner
 - Project Name
 - Subcontract Scope
 - Subcontract Value
 - Owner's contact name and phone number.

If Bidder and a proposed Subcontractor have not worked together on at least three projects in the five years, Bidder must submit the information set forth above for the three most recent similar projects to the Project that a proposed Subcontractor has worked on.

The above Subcontractor information, as well as the information pertaining to each proposed Subcontractor, shall be used in the Owner's determination of the lowest responsible bid.

Once a Bidder identifies its proposed Subcontractors as set forth herein, and Owner makes no objections, the list shall not be changed unless written approval of the change is authorized by the Owner and Design Professional.

- b. **FINANCING: The following additional financial information is not a public record under Ohio Revised Code Section 149.43 and will be kept confidential, except under proper order of a court, per Ohio Revised Code Section 9.312(A).**
 - i. Provide a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

- Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);
- Net Fixed Assets;
- Other Assets;
- Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes); and
- Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

ii. Provide the name and address of firm preparing attached financial statement, and date thereof.

iii. If the attached financial statement is not for the identical organization named in the completed Contractor's Qualification Statement submitted with the bid, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsiary).

8. Affidavit as to Personal Property Taxes. Each successful Bidder shall submit, prior to the time of the entry into the Contract, an affidavit in the form required by Section 5719.042, Ohio Revised Code, regarding the status of the Bidder's personal property taxes. A copy of the affidavit form is included with the Contract Documents.
9. No Bidder may withdraw its bid within **sixty (60)** days after the date bids are opened. The Owner reserves the right to waive any formalities or irregularities or to reject any or all bids.
10. The Owner reserves the right to disqualify bids, before or after opening, upon evidence of collusion with intent to defraud or other illegal practices on the part of the Bidder.
11. Award of Contract. The award of the Contract, when required, will only be made pursuant to a duly adopted resolution of the Owner.

I. EXECUTION OF CONTRACT

1. Within the time designated by the Owner or Design Professional after award of the Contract, the successful Bidder shall execute and deliver to the Owner or Design Professional the required number of copies of the Owner-Contractor Agreement, in the form included in the Contract Documents, and all accompanying documents requested, including, but not limited to, a Contract Bond (if applicable), insurance certificates, and a valid Workers' Compensation Certificate. The successful Bidder shall have no property interest or rights under the Owner-Contractor Agreement until the Agreement is executed by the Owner.

J. SUBSTITUTIONS/NON-SPECIFIED PRODUCTS

1. Certain brands of material or apparatus are specified. Each bid will be based on these brands, which may be referred to in the Contract Documents as Standards. The use of another brand (referred to as a substitution or proposed equal in the Contract Documents, when a bidder or the contractor seeks to have a different brand of material or apparatus than that specified approved by the Owner for use in the Project) may be requested as provided herein.
2. The products specified in the Contract Documents establish a standard of required function, dimension, appearance, and quality.

3. Bidders wishing to obtain approval to bid non-specified products shall submit written requests to the Design Professional a minimum of ten (10) calendar days before the bid date and hour. To facilitate the submission of requests, a Pre-Bid Substitution Form is included in the Contract Documents. The Bidder shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution, including the name of the proposed manufacturer and/or product and a complete description of the proposed product including the manufacturer's name and model number or system proposed, drawings, product literature, performance and test data, color selections or limitations, and any other information necessary for evaluation. Include a statement including any changes in other materials, equipment, or other work that would be required if the proposed product is incorporated in the materials, equipment, or other work that would be required if the proposed product is incorporated in the work. The burden of proof of the merit of the proposed product is on the proposer. The Design Professional's decision on approval of a proposed product will be final.

The following will be cause for rejection of a proposed substitution:

- a. Requests submitted by subcontractors, material suppliers, and individuals other than Bidders;
 - b. Requests submitted without adequate documentation;
 - c. Requests received after the specified cut-off date.
4. When the Design Professional approves a product submission before receipt of bids, the approval will be included in an Addendum, and Bidders may include the pricing of this product in their bid. Bidders shall not rely on approvals made in any other manner.
 5. In proposing a non-specified product or a substitution, the Bidder represents and warrants that each proposed product will not result in any changes to the Project, including changes to the Work of other contractors, or any decrease in the performance of any equipment or systems to be installed in the Project and agrees to pay any additional costs incurred by the Owner and the Owner's consultants as a result of a non-specified or substitute product that is accepted.
 6. Following the award of the Contract, there shall be no substitutions for specified products, except pursuant to a Change Order. The Owner in its sole discretion may decline to consider a substitution for a Change Order.

K. ALTERNATES

1. The Owner may request bids on alternates. If the Owner requests bids on alternates, the Bidder should include the cost of the alternates requested on its Bid Form.
2. At the time of awarding the Contract, the Owner will select or reject alternates as it determines is in its best interest. A Bidder's failure to include on its Bid Form the cost of an alternate selected by the Owner and applicable to the Bidder's work shall render the bid non-responsive and be grounds for the rejection of the bid. Otherwise, the failure to include the cost of an alternate will not be deemed material.
3. The Bidder acknowledges that although there is an estimate for the cost of the Project, the market conditions may and frequently do result in the estimate being different from the sum of the bids received, either higher or lower. The Bidder understands that the Owner may include alternates, which may include deduct alternates as well as add alternates, to give it flexibility to build the Project with the funds available. The Bidder further understands and acknowledges that use of add and deduct alternates is a long held customary practice in the construction industry in the State of Ohio. The Bidder also acknowledges that the Owner will not make a decision about the alternates on which to base the award of contracts until the bids are received, and the Owner can compare its available funds with the base bids and the cost or savings from selecting different alternates. The Bidder understands that the award to the Bidder submitting the lowest responsible bid will be based on the lowest base bid plus selected

alternates, and may result in an award to a Bidder other than the Bidder that submitted the lowest base bid.

4. If, during the progress of the Work, the Owner desires to reinstate any alternate not included in the Contract, the Owner reserves the right to reinstate the alternate at the price bid by the Contractor provided that such action is taken in sufficient time so as not to delay the progress of the work or cause the Contractor additional expense.

L. UNIT PRICES

1. Where unit prices are requested in the Bid Form the Bidder should quote a unit price. Unless otherwise expressly provided in the Contract Documents, such unit prices shall include all labor, materials, and services necessary for the timely and proper installation of the item for which the unit prices are requested. The unit prices quoted in the bid shall be the basis for any Change Orders entered into under the Owner-Contractor Agreement, unless the Design Professional determines that the use of such unit prices will cause substantial inequity to either the Contractor or the Owner.

M. ADDENDA

1. The Owner reserves the right to issue Addenda changing, altering, or supplementing the Contract Documents prior to the time set for receiving bids. The Design Professional will issue the Addenda to clarify bidders' questions and/or to change, alter, or supplement the Contract Documents.
2. Any explanation, interpretation, correction, or modification of the Contract Documents will be issued in writing in the form of an Addendum, which shall be the only means considered binding; explanations, interpretations, etc., made by any other means shall NOT be legally binding. All Addenda shall become a part of the Contract Documents.
3. Bidders shall submit written questions to **Larry Rancour, Schorr Architects, at lrancour@schorrarchitects.com, by 12:00 P.M. on July 29, 2024** to allow sufficient time for the Design Professional to respond. All Addenda will be issued, except as hereafter provided, and e-mailed or otherwise furnished to persons who have obtained Contract Documents for the Project, at least seventy-two (72) hours prior to the published time for the opening of bids, excluding Saturdays, Sundays, and legal holidays. If any Addendum is issued within such seventy-two (72) hour period, then the time for opening of bids shall be extended one (1) week with no further advertising of bids required.
4. Copies of each Addendum will be sent only to the Bidders to whom Contract Documents have been issued and to Plan Rooms where copies of the Contract Documents are maintained. Receipt of Addenda shall be indicated by Bidders in the space provided on the Bid Form. Bidders are responsible for acquiring issued Addenda in time to incorporate them into their bid. Bidders should contact the Design Professional prior to the bid opening to verify the number of Addenda issued.
5. Each Bidder shall carefully read and review the Contract Documents and immediately bring to the attention of the Design Professional any error, omission, inconsistency, or ambiguity therein.
6. If a Bidder fails to indicate receipt of all Addenda through the last Addendum issued by the Design Professional on its Bid Form, the bid of such Bidder will be deemed to be responsive only if:
 - a. The bid received clearly indicates that the Bidder received the Addendum, such as where the Addendum added another item to be bid upon and the Bidder submitted a bid on that item; or
 - b. The Addendum involves only a matter of form or is one which has either no effect or has merely a trivial or negligible effect on price, quantity, quality, or delivery of the item bid upon.

N. INTERPRETATION

1. If a Bidder contemplating submitting a bid for the proposed Project is in doubt as to the true meaning of any part of the Contract Documents, it may submit a written request for an interpretation thereof to **Larry Rancour, Schorr Architects, at lrancour@schorrarchitects.com** by the deadline for questions per paragraph M.3 above. Any interpretation of the proposed documents will be made by Addendum only, duly signed by the Design Professional, and a copy of such Addendum will be mailed or delivered to each Bidder receiving a set of Contract Documents and each plan room where the Contract Documents are maintained. The Owner will not be responsible for any other explanation or interpretation of the proposed documents.
2. In interpreting the Contract Documents, words describing materials that have a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with the well-known meaning recognized by the trade.
3. Bidders are responsible for notifying the Owner and the Design Professional in a timely manner of any ambiguities, inconsistencies, errors, or omissions in the Contract Documents. The Bidder shall not, at any time after the execution of the Contract, be compensated for a claim alleging insufficient data, incomplete Contract Documents, or incorrectly assumed conditions regarding the nature or character of the Work, if no request was made by the Bidder prior to the bid opening.

O. STATE SALES AND USE TAXES

1. The Owner is a political subdivision of the State of Ohio and is exempt from taxation under the Ohio Sales Tax and Use Tax Laws. Building materials that the successful Bidder purchases for incorporation into the Project will be exempt from state sales and use taxes if the successful Bidder provides a properly completed Ohio Department of Taxation Construction Contract Exemption Certificate to the vendors or suppliers when the materials are acquired. The Owner will execute properly completed certificates on request.

P. DATE FOR SUBSTANTIAL COMPLETION/ DATE FOR FINAL COMPLETION /LIQUIDATED DAMAGES

1. The Date for Substantial Completion (aka Contract Time), Date for Final Completion, and Liquidated Damages shall be as defined and set forth in the Owner-Contractor Agreement. **By submitting its Bid, each Bidder agrees that the period for performing its Work is reasonable.**

Q. OWNER'S RIGHT TO WAIVE DEFECTS AND IRREGULARITIES

1. The Owner reserves the right to waive any and all irregularities provided that the defects and irregularities do not affect the amount of the bid in any material respect or otherwise give the Bidder a competitive advantage.

R. MODIFICATION/WITHDRAWAL OF BIDS

1. Modification. A Bidder may modify its bid by written communication to the Owner addressed to the Owner's Representative at any time prior to the scheduled closing time for receipt of bids, provided such written communication is received by Owner's Representative prior to the bid deadline. The written communication shall not reveal the bid price, but should provide the addition or subtraction or other modification so that the final prices or terms will not be known until the sealed bid is opened. If the Bidder's written instructions with the change in bid reveal the bid amount in any way prior to the bid opening, the bid may be rejected as non-responsive.
2. Withdrawal Prior to Bid Deadline. A Bidder may withdraw its bid at any time for any reason prior to the bid deadline for the opening of bids. The request to withdraw shall be made in writing to and received by the Owner prior to the time of the bid opening.

3. Withdrawal after Bid Deadline.

- a. All bids shall remain valid and open for acceptance for a period of at least 60 days after the bid opening; provided, however, that a Bidder may withdraw its bid from consideration after the bid deadline when all of the following apply:
 - (1) the price bid was substantially lower than the other bids;
 - (2) the reason for the bid being substantially lower was a clerical mistake, rather than a mistake in judgment, and was due to an unintentional and substantial error in arithmetic or an unintentional omission of a substantial quantity of work, labor, or material;
 - (3) the bid was submitted in good faith; and
 - (4) the Bidder provides written notice to the Owner, to the attention of the Owner's Representative, within two (2) business days after the bid opening for which the right to withdraw is claimed.
- b. No bid may be withdrawn under this provision if the result would be the awarding of the contract on another bid for the bid package from which the Bidder is withdrawing its bid to the same Bidder.
- c. If a bid is withdrawn under this provision, the Owner may award the Contract to another Bidder determined by the Owner to be the lowest responsible bidder or the Owner may reject all bids and advertise for other bids. In the event the Owner advertises for other bids, the withdrawing Bidder shall pay the costs incurred in connection with the rebidding by the Owner, including the cost of printing new Contract Documents, required advertising, and printing and mailing notices to prospective bidders, if the Owner finds that such costs would not have been incurred but for such withdrawal.

S. COMPLIANCE WITH APPLICABLE LAWS

1. By submitting a bid for Work on the Project, the Bidder acknowledges that it is in compliance with applicable federal, state, and local laws and regulations, including, but not limited to, the following:
 - a. Equal Employment Opportunity/Nondiscrimination. The Bidder agrees that if it is awarded a contract that in the hiring of employees for performance of work under the contract or any subcontract, neither it nor any subcontractor, or any person acting on its behalf or its subcontractor's behalf, by reason of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform work to which the employment relates. The Bidder further agrees that neither it nor any subcontractor or any person on its behalf or on behalf of any subcontractor, in any manner, shall discriminate against or intimidate any employees hired for the performance of the work under the contract on account of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color.
 - b. Ethics Laws. The Bidder represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.

T. FINDINGS FOR RECOVERY

1. By submitting its bid, each Bidder certifies for reliance of the Owner that it has no unresolved finding for recovery against it issued by the Auditor of the State of Ohio on or after January 1, 2001, except as permitted by Section 9.24 (F) of the Ohio Revised Code.

U. FEDERAL DAVIS-BACON PREVAILING WAGES

1. Federal David-Bacon Prevailing Wage Rates do not apply to this Project.

END OF INSTRUCTIONS TO BIDDERS

BID FORM

1.01 BID SUBMITTED BY:

(Contractor)

Date bid submitted: _____

1.02 DELIVER TO:

**Berkshire Local School District Board of Education
ATTN: Beth McCaffrey, Treasurer
14155 Claridon Troy Road
Burton, Ohio 44021**

1.03 Having carefully reviewed the Instructions to Bidders, Drawings, Specifications and other Contract Documents for the Project titled **Pre-K Modular – Site Utilities Package Project** including having also received, read, and considered the following Addenda:

Addendum No.	Dated
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

and likewise having inspected the site and the conditions affecting and governing the Project, the undersigned hereby proposes to furnish all materials and to perform all labor, as specified and described in the said Specifications and/or as shown on the said Drawings for all Work necessary to complete the Project on a timely basis and in accordance with the Contract Documents regardless of whether expressly provided for in such Specifications and Drawings.

1.04 Before completing the Bid Form, the undersigned represents that it has carefully reviewed the Request for Bids, Instructions to Bidders, this Bid Form, Form of Bid Guaranty and Contract Bond, Contractor's Affidavit (O.R.C. 5719.042), Owner-Contractor Agreement as modified for the Project, Drawings, Project Specifications, and other Contract Documents. Failure to comply with provisions of the Contract Documents may be cause for disqualification of the bid.

1.05 BONDS AND CONTRACT: If the undersigned is notified of bid acceptance, it agrees to furnish required bonds as indicated in the Instructions to Bidders.

1.06 COMPLETION OF WORK: In submitting a bid, the undersigned agrees to execute the Owner-Contractor Agreement in the form included in the Contract Documents and to complete its Work as required by the Contract Documents.

NOTE A: The wording of the Bid Form shall be used throughout, without change, alteration, or addition. Any change may cause it to be rejected.

NOTE B: Bidder is cautioned to bid only on the Brands or Standards specified.

NOTE C: If there is an inconsistency or conflict in the Bid amount, the lowest amount shall control, whether expressed in numbers or words.

2.01 BID:

Include the cost of all labor and material for the contract listed below. Bidder is to fill in all blanks related to the Bid Package for which a bid is being submitted. If no bid is submitted for an item, leave the item blank or insert "NO BID" in the blank. For alternate items, indicate whether the amount stated is in addition to or a deduction from the base bid amount (if there is no indication whether the amount for an alternate is an addition or a deduction, the amount shall be a deduction).

2.02 Bidder will complete the Work in accordance with the Contract Documents for the following price, not including alternates:

Lump Sum – All Work (including allowances outlined below):

_____ Dollars (\$ _____)
 (Words) (Figures)

Allowance:

Description	Amount
Construction Testing	\$5,000.00

Alternates:

Description	Add/ Deduct	Amount
Utility boring under paved areas in lieu of cutting and patching pavement	_____	\$ _____

3.01 INSTRUCTIONS FOR SIGNING

- A. The person signing for a sole proprietorship must be the sole proprietor or his authorized representative. The name of the sole proprietor must be shown below.
- B. The person signing for a partnership must be a partner or his authorized representative.
- C. The person signing for a corporation must be the president, vice president or other authorized representative; or he must show authority, by affidavit, to bind the corporation.
- D. The person signing for some other legal entity must show his authority, by affidavit, to bind the legal entity.

4.01 BIDDER CERTIFICATIONS. The Bidder hereby acknowledges that the following representations in this bid are material and not mere recitals:

- 1. **The Bidder acknowledges that this is a public project involving public funds, and that the Owner expects and requires that each successful Bidder adhere to the highest ethical and performance standards. The Bidder by submitting its bid pledges and agrees that (a) it will act at all times with absolute integrity and truthfulness in its dealings with the Owner and the Design Professional, (b) it will use its best efforts to cooperate with the Owner and the Design Professional and all other Contractors on the Project and at all times will act with professionalism and dignity in its dealings with the Owner, Design Professional and other Contractors, (c) it will assign only competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her, and (d) it has read, understands and will comply with the terms of the Contract Documents.**

2. The Bidder represents that it has had a competent person carefully and diligently review each part of the Contract Documents, including any Divisions of the Specifications and parts of the Drawings that are not directly applicable to the Work on which the Bidder is submitting its bid. By submitting its bid, each Bidder represents and agrees, based upon its careful and diligent review of the Contract Documents, that it is not aware of any conflicts, inconsistencies, errors or omissions in the Contract Documents for which it has not notified the Design Professional in writing at least seven (7) days prior to the bid opening. If there are any such conflicts, inconsistencies, errors or omissions in the Contract Documents, the Bidder (i) will provide the labor, equipment or materials of the better quality or greater quantity of Work; and/or (ii) will comply with the more stringent requirements. The Bidder will not be entitled to any additional compensation for any conflicts, inconsistencies, errors or omissions that would have been discovered by such careful and diligent review, unless it has given such prior written notice to Design Professional.
3. The Bidder represents that it has had a competent person carefully and diligently inspect and examine the entire site for the Project and the surrounding area, including all parts of the site applicable to the Work for which it is submitting its bid, and carefully correlate the results of the inspection with the requirements of the Contract Documents. The Bidder agrees that its bid shall include all costs attributable to site and surrounding area conditions that would have been discovered by such careful and diligent inspection and examination of the site and the surrounding area, and the Bidder shall not be entitled to any Change Order, additional compensation, or additional time on account of conditions that could have been discovered by such an investigation.
4. The Bidder represents, understands and agrees that a) the Claim procedures in the General Conditions as modified for the Project are material terms of the Contract Documents, b) if it has a Claim, it will have its personnel provide complete and accurate information to complete and submit the Statement of Claim form on a timely basis, c) the proper completion and timely submission of a Statement of Claim form is a condition precedent to any change in the Contract Sum or the Contract Time(s), and d) the proper and timely submission of the Statement of Claim form provides the Owner and the Design Professional with necessary information so that the Owner may investigate the Claim and mitigate its damages.
5. The Bidder represents that the bid contains the name of every person interested therein and is based upon the Standards specified by the Contract Documents.
6. The Bidder and each person signing on behalf of the Bidder certifies, and in the case of a bid by joint venture, each member thereof certifies as to such member's entity, under penalty of perjury, that to the best of the undersigned's knowledge and belief: (a) the Base Bid, any Unit Prices and any Alternate bid in the bid have been arrived at independently without collusion, consultation, communication or agreement, or for the purpose of restricting competition as to any matter relating to such Base Bid, Unit Prices or Alternate bid with any other Bidder; (b) unless otherwise required by law, the Base Bid, any Unit Prices and any Alternate bid in the bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the bid opening, directly or indirectly, to any other Bidder who would have any interest in the Base Bid, Unit Prices or Alternate bid; (c) no attempt has been made or will be made by the Bidder to induce any other Person to submit or not to submit a bid for the purpose of restricting competition; and (d) the statements made in this Bid Form are true and correct.
7. The Bidder will execute the form of Owner/Contractor Agreement in the form included with the Contract Documents, if a Contract is awarded on the basis of this bid, and if the Bidder does not execute the Contract Form for any reason, other than as authorized by law, the Bidder and the Bidder's Surety are liable to the Owner.
8. The Bidder certifies that the upon the award of a Contract, the Contractor will ensure that all of the Contractor's employees, while working on the Project site, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

9. The Bidder agrees to furnish any information requested by the Design Professional or the Owner's authorized representative to evaluate that the Bidder has submitted the lowest responsible bid and that the bid is responsive to the specifications.
10. The Bidder certifies that it has no unresolved findings for recovery issued by the Auditor of State.
11. The Bidder certifies that it is aware of and in compliance with the requirements of Ohio Revised Code Section 3517.13 regarding campaign contributions.
12. The Bidder further states that it is a duly licensed contractor, for the type of work proposed, in accordance with the local requirements, and that all fees, permits, etc., pursuant to submitting this Bid have been paid in full.

LEGAL NAME OF BIDDER: _____

BIDDER IS (check one): sole proprietor partnership corporation other legal entity

NAME & TITLE OF PERSON LEGALLY AUTHORIZED TO BIND BIDDER TO A CONTRACT:

Name	Title
DATE SIGNED: _____	SIGNATURE: _____
	ADDRESS: _____ _____
	TELEPHONE: _____
	FAX: _____
	FEDERAL TAX I.D. # _____

When the Bidder is a partnership or a joint venture, state name and address of each partner in the partnership or participant in the joint venture below:

Name	Address
Name	Address
Name	Address

Name

Address

Name

Address

END OF SECTION

CONTRACTOR'S QUALIFICATION STATEMENT

SUBMITTED TO:

Berkshire Local School District Board of Education
 ATTN: Beth McCaffrey, Treasurer
 14155 Claridon Troy Road
 Burton, Ohio 44021

NAME OF PROJECT: **Pre-K Modular – Site Utility Package Project**

SUBMITTED BY: _____

CONTRACTOR PROJECT CONTACT NAME: _____

ADDRESS: _____

EMAIL: _____

PHONE: _____

PRINCIPAL OFFICE: _____

- Corporation
- Partnership
- Individual
- Joint Venture
- Other

#	Question	Response
1 - Organization		
1.1	How many years has your organization been in business as a Contractor in the construction industry?	
1.2	How many years has your organization been in business under its present business name?	
1.2.1	Under what other or former names has your organization operated?	
1.3	Is your organization a corporation? If yes, answer #1.3.1 – 1.3.6	
1.3.1	Date of incorporation	

1.3.2	State of incorporation	
1.3.3	President's name	
1.3.4	Vice President's name(s)	
1.3.5	Secretary's name	
1.3.6	Treasurer's name	
1.4	Is your organization a partnership? If yes, answer #1.4.1 – 1.4.3	
1.4.1	Date of organization	
1.4.2	Type of partnership (if applicable)	
1.4.3	Name(s) of general partner(s)	
1.5	Is your organization individually owned? If yes, answer #1.5.1 – 1.5.2	
1.5.1	Date of organization	
1.5.2	Name of owner	

1.6	If the form of your organization is other than those listed above, describe it and name the principals.	
2 - Licensing		
2.1	List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.	
2.2	List jurisdictions in which your organization's partnership or trade name is filed.	
2.3	List any suspension or revocations of any professional license of any director, officer, owner, or managerial employees of your organization, to the extent that any work to be performed on this Project is within the field of such licensed profession.	
3 - Financing: After bid opening, within 24 hours of a request made by the Owner or Design Professional, the apparent low Bidder and any other Bidder must submit additional financial information as requested.		
4 - References		

4.1	Trade References	
4.2	Bank References	
4.3	Surety – name of bonding company	
4.4	Surety – name and address of agent	
5 – Claims and Organization History		
5.1	Attach your organization’s record for both resolved and unresolved findings of the Auditor of the State of Ohio for recovery as defined in Section 9.24 of the Ohio Revised Code. If none, state “none”.	
5.2	Does your organization participate in a drug-free workplace program?	
5.3	Has your organization ever failed to complete any work or failed to complete any work by the substantial completion date, final completion date, or in a timely manner? If yes, attach details.	

5.4	<p>Within the last five (5) years has your organization or any of its officers prosecuted any Claims, had any Claims prosecuted against it or them, or been involved in or is currently involved in any mediation or arbitration proceedings or lawsuits related to any construction project, or has any judgments or awards outstanding against it or them? If the answer is yes, please attach the details for each Claim, including the names and telephone numbers of the persons who are parties, the amount of the Claim, the type of Claim and basis for the Claim, and the outcome.</p> <p>Note: As used in this document “Claim” means a Claim initiated under the Contract Documents for a project or relating to the Work for a project, including Claims made against performance bonds secured by the Contractor on other construction projects.</p>	
5.5	<p>Has your organization ever failed to comply with federal, state, and local laws, rules and regulations including but not limited to the Occupational Safety and Health Act, the Ohio Prevailing Wage laws, and Ohio ethics laws? If yes, please attach details and reason(s) for each instance and the outcome including any fines or penalties imposed.</p>	
5.6	<p>Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? If the answer is yes, please attach details for each instance, including the names and telephone numbers of the persons who are parties to the contract, and the reason(s) the contract was not completed.</p>	
5.7	<p>If any of the following members of your organization's management – president, chairman of the board, or any director – operates or has operated another construction company during the last five (5) years, identify the member of management and the name of the construction company.</p>	
5.8	<p>If your organization is operating under a trade name registration with the Secretary of State for the State of Ohio, identify the entity for which the trade name is registered. If none, state “none.”</p>	
5.9	<p>If your organization is a division or wholly-owned subsidiary of another entity or has another relationship with another entity, identify the entity of which it is a division or wholly-owned subsidiary or with which it has another relationship and also identify the nature of the relationship. If none, state “not applicable.”</p>	

5.10	List any projects within the previous five years where a public entity determined that your organization was not a responsible bidder, including the name of the public entity, the reasons given by the public entity, and an explanation thereof.	
6 - Experience		
6.1	List the categories of work that your organization normally performs with its own forces	
6.2	State average annual amount of construction work your organization has performed during the last five years	
6.3	State total amount of work in progress and under contract	
6.4	Describe the size and experience of your organization's work force and your equipment and facilities, in relation to your organization's ability to complete the Project successfully and on time.	
6.5	<p>In the chart below, provide the following information for each contract your organization has had during the last 5 years, including current contracts, where the Contract Sum is/was 50% or more of the bid amount for this Project, including add alternates. Include details regarding timeliness of performance and quality of work.</p> <p>List the original contract price for each project, the amount of any change orders or cost overruns on each, and the reasons for the change orders or cost overruns, and your organization's record for complying with and meeting completion deadlines on construction projects.</p> <p>If there are more than 10 of these contracts only provide information on the most recent 10 contracts, including current contracts.</p>	

Project/Scope of Work	Original Contract Sum	Amount of any change orders or cost overruns and reasons	Completion deadlines met?	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

Project/Scope of Work	Original Contract Sum	Amount of any change orders or cost overruns and reasons	Completion deadlines met?	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

6.6 In the chart below, provide the following information for each project your organization has had during the last 5 years, which your organization believes is of comparable or greater size and complexity than the Owner's project. If there are more than 5 of these projects, only provide information on the most recent 5 projects, including current projects.

Project and Scope of Work	Contract Sum	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

Project and Scope of Work	Contract Sum	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

6.7 In the chart below, list the construction education, training and construction experience for each person who will fill a management role on the Project, including without limitation the Project Executive, Project Engineer, Project Manager, and Project Superintendent. For each person listed, include with the other information, the last three projects on which the person worked and the name and telephone number of the design professional and the Owner. Attach a separate sheet if necessary, identifying the question number.

Name/Role	Education and Training	Project #1, Owner & A/E Contact, Telephone Number	Project #2, Owner & A/E Contact, Telephone Number	Project #3, Owner & A/E Contact, Telephone Number

Name/Role	Education and Training	Project #1, Owner & A/E Contact, Telephone Number	Project #2, Owner & A/E Contact, Telephone Number	Project #3, Owner & A/E Contact, Telephone Number

6.8 In the chart below, list construction projects your organization has in progress with an original Contract Sum of more than \$100,000.00, giving the name of project, owner and its telephone number, design professional and its telephone number, contract amount, percent complete and scheduled completion date. Attach a separate sheet if necessary, identifying the question number.

Project/Scope of Work	Contract Sum	Scheduled Completion Date	% Complete	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

Project/Scope of Work	Contract Sum	Scheduled Completion Date	% Complete	Owner's Contact & Telephone Number	Engineer's or Architect's Representative Name & Telephone Number

Additional Criteria. The Owner, in its discretion, reserves the right to request additional information and documentation relating to the foregoing and related to any of the criteria listed in the Bidding and Contract Documents after the bid opening. The Owner may consider such information and documentation in determining which bidder is the lowest responsible. The Owner, in its discretion, may consider and give such weight to any and all criteria as it deems appropriate.

Certification. The undersigned certifies for the reliance of the Owner that after diligent investigation, to the best of the undersigned's belief, the information provided with this Contractor's Qualification Statement is true, accurate and not misleading.

SIGNATURE _____

Dated at this ____ day of _____, 20__.

Name of Organization: _____

By: _____ [PRINT NAME]

Signature: _____

Title: _____

_____, being duly sworn, deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Subscribed and sworn before me this ____ day of _____ 20__.

Notary Public

My Commission Expires: _____

SEAL

OWNER-CONTRACTOR AGREEMENT

Owner:

Berkshire Local School District Board of Education
14155 Claridon Troy Road
Burton, Ohio 44021

Contractor:

[REDACTED]
[REDACTED]
[REDACTED]

Contact: [REDACTED]

Phone: [REDACTED]

Email: [REDACTED]

**Project: Pre-K Modular – Site Utilities Package
Project**

**Location: 14155 Claridon Troy Road, Burton, Ohio
44021**

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 **Site Utilities Package for the Pre-K Modular Unit** (the “Project”). Contractor was procured for this Project pursuant to Ohio Revised Code Section 3313.46, as the Owner publicly advertised the Project for bidders to submit sealed bids.

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.

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, so as to 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 it make its parts fit together properly.

1.5. [Not Used.]

1.6. [Not Used.]

2. CONTRACT DOCUMENTS.

2.1. The Contract Documents consist exclusively of the following documents incorporated by reference:

- A. Legal Notice;
- B. Instructions to Bidders;
- C. Bid Form;
- D. Owner-Contractor Agreement, including all exhibits attached hereto;
- E. Drawings and Specifications prepared by Schorr Architects, Inc.;
- F. Executed Bid Guaranty and Contract Bond;
- G. Sales & Use Tax/ Construction Contract Exemption Certificate;
- H. Statement of Claim Form;
- I. Design Professional’s Certificate of Substantial Completion;
- J. Contractor’s Affidavit of Payment or Amounts Withheld;
- K. Contractor Waiver and Release Affidavit;
- L. Subcontractors/ Suppliers Waiver and Release Affidavit;

- M. Subcontractors/ Suppliers Lien Waiver and Release Affidavit;
- N. Subcontractors/ Suppliers Final Lien Waiver and Release Affidavit;
- O. Pre-Bid Substitution Form;
- P. Addenda issued;
- Q. Executed Contractor's Personal Property Tax Affidavit (O.R.C. 5719.042);
- R. Contractor's executed Conflict of Interest Affidavit
- S. Modifications issued after the execution of the contract, including:
 - a. A written amendment to the Agreement signed by both parties;
 - b. A Change Order; or
 - c. A Construction Change Directive

2.2. Contractor will use the State of Ohio Subcontract Form for all subcontracted Work, in accordance with ORC Section 153.503(C) and OAC Section 153:1-3-02.

2.3. Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Days shall mean calendar days unless noted otherwise.

3. OWNER REPRESENTATIVE AND DESIGN PROFESSIONAL.

3.1. Design Professional. The Design Professional for this Project is Schorr Architects, Inc. The Design Professional prepared the drawings and specifications for the Work. The Design Professional will also provide construction administration services for the Project. The Contractor will coordinate with the Design Professional, as instructed by the Owner.

3.2. John Stoddard, Superintendent, is the Owner's Representative with respect to all matters involving Owner.

3.2.1. Except as specifically stated to the contrary elsewhere in this Agreement, Contractor will direct all communications to Owner through the Owner's Representative.

3.3. Contractor will coordinate the Work with the Owner and Owner's separate contractors, consultants, or other agents. Contractor will provide access to the Work at all times.

4. TIME FOR COMPLETION AND PROJECT COORDINATION.

4.1. Contract Time. The Work shall commence as of the Effective Date of this Agreement (the "Date of Commencement"), with all associated Work being completed on or before **October 15, 2024** (the "Date for Substantial Completion").

4.1.1. Substantial Completion. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Notwithstanding anything in the Contract Documents to the contrary, this shall include, but is not limited to, start up and successful testing of all systems and equipment.

4.1.2. Following Substantial Completion of the Work or a designated portion thereof, as certified by the Design Professional or confirmed by the Owner, and Owner's receipt of consent of the Contractor's surety, if any, the Owner shall make a payment of retainage applying to such Work. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The Owner is entitled to withhold 200% of the value of such incomplete or nonconforming Work.

4.1.3. Date of Final Completion. Final Completion shall mean that the Work is complete in all respects in accordance with the Contract Documents and the Contractor has submitted to the Owner all required documents. The date of Final Completion shall be within **14** calendar days from the Date of Substantial Completion.

4.2. Time is of the Essence. THE DATES IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THIS AGREEMENT. CONTRACTOR WILL PROSECUTE ITS WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, INCLUDING ANY AMENDMENTS THERETO.

4.3. Contractor's Construction and Submittal Schedules

4.3.1. The Contractor shall prepare for Owner's review and approval the construction schedule ("Construction Schedule") and a corresponding detailed schedule of values pursuant to the Ohio Revised Code Section 153.13 within seven (7) calendar days after the Effective Date. The schedule of values must be broken out into labor and materials for each line item. The Contractor shall prepare the Construction Schedule in Critical Path Method ("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.

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

4.3.1.2. The Construction Schedule shall be manpower loaded;

4.3.1.3. 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;

4.3.1.4. 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

4.3.1.5. 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.

4.3.2. 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 4.3.3. 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 for Substantial Completion.

4.3.3. If the Owner determines that the performance of the Work has not progressed so that it is likely that the Contractor will not achieve Substantial Completion of its Work by the Date for 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 achieve Substantial Completion of its Work by its Date for Substantial Completion.

4.3.3.1. 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 4.3.3, unless the Contractor is able to establish that it is entitled to additional compensation under the terms of the Contract Documents.

4.4. Delays and Accelerations.

4.4.1. 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.

4.4.2. 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 4.4.3.

4.4.3. Compensation for Acceleration of the Work.

4.4.3.1. Owner's Obligation to Pay. When Owner initiates the acceleration of the Work, Owner will pay Contractor, as provided in Section 4.4.3.2, for Contractor accelerating its Work so that its Work is substantially complete by the Date for Substantial Completion. However, when Contractor's Work is ordered to be accelerated as a result of Contractor's own fault or the fault of its subcontractors or suppliers, Owner will not pay Contractor for such acceleration.

4.4.3.2. 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 are 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.

5. CORRECTIVE ACTION.

5.1. If Owner determines that Contractor is in default by 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 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 CORRECT SUCH DEFICIENCIES WITHIN FIFTEEN (15) DAYS OF SUCH NOTICE OR, (3) IF OWNER INSTRUCTS CONTRACTOR TO TAKE URGENT CORRECTIVE ACTION TO PROTECT PERSONS OR PROPERTY, 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 without interruption and without waiting to initiate any dispute under this Agreement or the resolution of any dispute initiated under this Agreement. Failure to comply with this provision shall be an additional default.

6. COMPENSATION.

6.1. 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 \$ [REDACTED]. The Contract Sum includes the following:

6.1.1. Base Bid Amount: \$ [REDACTED] (Lump Sum Bid); and

6.1.2. Allowances included in the Contract Sum:

Allowance Description	Amount
Construction Testing	\$5,000.00

All Allowances shall be included in the schedule of values. With each Application for Payment, the Contractor shall include the balance of any Allowances and how the Allowances have been expended to date. The Contractor will obtain approval from the Owner prior to incurring any costs in excess of an Allowance; any approved cost in excess of an Allowance will be documented by a Change Order signed by both parties. Before final payment, an appropriate Change Order will be issued to reconcile the Contract Sum so that it reflects actual amounts due to the Contractor on account of Work covered by Allowances. Remaining Allowances amounts not due to the Contractor on account of Work covered by the Allowances shall be retained by the Owner.

6.1.3. [Not Used.]

6.2. 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.

6.3. The Contract Sum includes fees and costs for any required 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. Contractor is responsible to secure any such permits, fees, licenses, and inspections.

6.4. Liquidated Damages.

6.4.1. Contractor must achieve Substantial Completion and Final Completion by the date stated in Section 4.1. By entering into this Agreement, Contractor agrees that the period for performing the Work is reasonable and that Contractor can achieve Substantial Completion by the date stated in this Agreement.

6.4.2. If Contractor does not achieve Substantial Completion and Final Completion of its Work on the Project by the Dates stated in Section 4.1, 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 or the Date of Final Completion, as may be modified in accordance with the Contract Documents, that the Contractor fails to achieve Substantial Completion or Final Completion.

<u>Substantial Completion</u>	
Contract Sum Amount	Dollars Per Day
\$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	\$700.00
More than \$2,000,000.01	\$1,000.00

Final Completion

Contract Sum Amount	Dollars Per Day
\$0.01 to \$50,000.00	\$50.00
\$50,000.01 to \$150,000.00	\$100.00
\$150,000.01 to \$500,000.00	\$150.00
\$500,000.01 to \$750,000.00	\$200.00
\$750,000.01 to \$1,000,000.00	\$250.00
\$1,000,000.01 to \$2,000,000.00	\$350.00
More than \$2,000,000.01	\$500.00

6.4.3. Contractor acknowledges by signing this Agreement with Owner that the amount of liquidated damages represent a reasonable estimate of the actual damages Owner would incur if the Work is not substantially or finally complete by the foregoing dates and that the damages that may result from the failure to substantially or finally complete the work by the foregoing dates are uncertain and difficult to ascertain. No waiver of consequential damages shall preclude the Owner from recovering liquidated damages. In the event Contractor fails to achieve Substantial Completion by the date of Final Completion, Contractor shall accrue liquidated damages for both Substantial Completion and Final Completion until each respective date is met.

6.4.4. Nothing in this Section 6.4 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.

7. PAYMENT AND RETAINAGE.

7.1. Payment.

7.1.1. 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 schedule 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. 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;
- (b) If required for the Project, the Certified Payroll Report for payment of prevailing wages;
- (c) Lien waivers from itself and all subcontractors, suppliers, and any other party that performed Work or supplied materials for the Project in a form acceptable to the Owner for the Work performed during the current billing period; and
- (d) Such other supplemental information as the Owner may require. Such other information may include a schedule of all materials and equipment stored on site.

7.1.2. 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 Contract Time or Construction 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.

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

7.2. Retainage.

7.2.1. Amount of Retainage.

7.2.1.1. 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.

7.2.1.2. 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.

7.2.2. Interest on Retainage.

7.2.2.1. 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.

7.2.2.2. In lieu of the provisions of Section 7.2.2.1, the Contractor may request to have the Owner instead deposit the retained funds, when the Work is 50% complete, into a separate escrow account governed by an escrow agreement, employing an escrow agent, by providing written notice to the Owner of the request prior to the submission of the first pay application. If the Contractor so requests, the Contractor will be responsible for all expenses associated with the escrow agent and escrow account beyond the interest income from the account, and the change and expense must be expressly documented in a change to the contract. If the Contractor does not request an escrow account prior to submission of the first pay application, the Contractor will be deemed to have waived its rights under ORC 153.63 to have the retained funds so deposited and governed by an escrow agreement.

7.2.3. 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.

7.3. Final Payment.

7.3.1. 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) All items required in Section 7.1.1;
- (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, including but not limited to, the final certified payroll report and required Affidavit of Compliance if Prevailing Wages are required for the Project.

7.3.2. 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 warranties required by the Contract Documents;
- (d) Claims for Indemnification;
- (e) Claims about which Owner has given Contractor notice; or
- (f) Claims arising after Final Payment.

8. CHANGES IN THE WORK.

8.1. Change Orders.

8.1.1. 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 Contract Time, if any.

8.1.2. 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.

8.1.3. 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 Contract Time. Total cumulative overhead and profit for Contractor and 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 Contract Time for the related work.

8.2. Construction Change Directives.

8.2.1. 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.

8.2.2. A Construction Change Directive shall be used in the absence of total agreement of a Change Order.

8.2.3. 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.

8.2.4. 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.

8.2.5. 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 9.

9. CLAIMS AND DISPUTES.

9.1. 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 7.1.2 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:

The Claim submitted herewith complies with Section 9.1 of the Owner-Contractor Agreement, which provides that "Contractor will not knowingly present or cause to be presented a false or fraudulent Claim."

9.2. Subject to the requirements of Article 9, if Contractor wishes to make a Claim for an increase in the Contract Sum, written notice must be given before proceeding to execute the Work.

9.3. Subject to the requirements of Article 9, if Contractor wishes to make a Claim for additional time, the required written notice must include an estimate of cost and probable effect of delay on progress of the Work. In the event of continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such claim 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.

9.3.1. The delays for which the Contractor is entitled to additional time are "Excusable Delays." The only Excusable Delays are those delays on the critical path which the Contractor establishes were: (a) caused by the Owner or those in privity of contract with the Owner, (b) physical damage to the Project over which the Contractor has no control, (c) labor disputes beyond the control of the Contractor, (d) work days lost due to weather conditions as provided under Section 4.4.1, (e) concealed or unknown conditions under Section 9.4, and (f) other unforeseeable delays beyond the control of the Contractor and its subcontractors and suppliers of any tier. The delays for which the Contractor is entitled to additional time and money are "Compensable Delays." The only Compensable Delays are those Excusable Delays which the Contractor establishes were proximately caused by an improper action or failure to act by the Owner. Owner, in its sole and reasonable discretion, shall determine whether a delay entitles Contractor to time extension or additional compensation.

9.4. 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 Contractor shall give written notice to the Owner and the Design Professional, if any, 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.

9.5. Contractor must make all claims by written affidavit per Article 9 within seven (7) days after the occurrence of the event giving rise to the Claim. Proper notice of delay as required under Section 4.4.1 is a condition precedent to entitlement of a Claim. Failure to do so results in an irrevocable waiver of the Claim.

9.6. 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.

9.7. If a Contractor's Claim has not been resolved at the time of Substantial Completion, the Contractor's exclusive remedy is to file suit in the Common Pleas Court for the county in which the Project is located within 90 days of Substantial Completion, unless the parties otherwise agree in writing, else such Claim is waived. Each party waives its right to remove any such suit to federal court.

9.8. Unless otherwise agreed in writing, Contractor shall continue its Work on the Project and shall maintain progress during any mediation, arbitration, 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.

9.9. 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.

9.10. Waiver of Claims for Consequential Damages. The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to the Owner's termination of the Agreement in accordance with this Agreement.

10. DEFAULT OF CONTRACTOR.

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

10.1.1. Contractor's failure to perform any of its obligations under the Contract Documents or failure to proceed to commence to correct such failure in accordance with Section 5.1.

10.1.2. Contractor's failure to pay its obligations incurred in connection with this Agreement as they become due or Contractor's insolvency.

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

10.2.1. Order Contractor to stop the Work, which Contractor must do immediately;

10.2.2. 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;

10.2.3. 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;

10.2.4. 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,

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

10.3. 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.

10.4. 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.

11. DEFAULT OF OWNER.

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

11.1.1.1. Failure of Owner to perform any express material obligation 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.

11.2. Contractor's Remedy.

11.2.1. Contractor's sole and exclusive remedy for the default of Owner shall be to follow the procedure set forth in Article 9.

11.2.2. Notwithstanding Section 11.2.1, if Owner fails to pay Contractor undisputed amounts as payment becomes due, Contractor may, upon fifteen (15) days written notice, stop the Work until payment of the undisputed amount owing has been received.

12. SUSPENSION OR TERMINATION FOR THE CONVENIENCE OF OWNER.

12.1. Suspension for the Convenience of Owner.

12.1.1. 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.

12.1.2. An equitable adjustment will be made for increases in the Contract Time and 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 for a concurrent event.

12.2. Termination for the Convenience of Owner.

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

12.2.2. 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.

12.2.3. If this Agreement is terminated for the Owner's convenience 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.

12.2.4. If this Agreement is terminated for the Owner's convenience 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.

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

13. INSURANCE, INDEMNIFICATION, AND BOND.

13.1. 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 in writing. Excess or umbrella coverage may be used to meet these levels of insurance. The Owner and Design Professional 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. The Contractor shall maintain all such coverage for a period of 3 years after the Date for Final Completion.

13.1.1. 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.

13.2. 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.

13.3. 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 13.3 to be covered, whichever is later. The insurance shall include interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the Project.

13.4. Owner and Contractor waive all rights, including all rights of subrogation, against each other and against Subcontractors, Sub-subcontractors, consultants, agents, and employees of the other for damages during construction, but only to the extent covered by (and not prohibited by) any applicable property insurance or builder's risk insurance, except such rights as they may have to the proceeds of such insurances.

13.5. 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 withhold amounts equal to any sums for which it is entitled to be indemnified from the amounts otherwise due Contractor under the Contract Documents.

13.6. 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.

13.7. Contract Bond.

13.7.1. 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.

13.7.1.1. 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.

13.7.2. 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.

13.7.3. 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 13.7.3 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.

14. WARRANTIES. In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents or applicable as a matter of law and not in limitation of the terms of the Contract Documents, 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 resulting damage within two (2) business days after written notice from the Owner. Contractor shall correct such breach and damage to the satisfaction of Owner within fifteen (15) days of such notice except when an extension of time is granted in writing by Owner; provided that if such notice is given after final payment hereunder, such 2-day period will be extended to seven (7) days and such 15-day period shall be extended to thirty (30) 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, design, 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 Article 14, 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.

15. GENERAL.

15.1. 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 pursuant to 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.

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

15.3. 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.

15.4. 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, 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.

15.5. 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.

15.6. 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 to the party at the address set forth at the beginning of this Agreement. Any party may change its address by giving written 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.

15.7. 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.

15.8. 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.

15.9. 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.

15.10. 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, including but not limited to ORC Chapter 4115 regarding prevailing wage rates, if applicable.

15.11. 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 any project safety plan or for Project safety and has no authority to direct the means and methods of Contractor.

15.12. 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 No Findings for Recovery.

15.13. No Findings for Recovery. The Contractor represents that the Contractor is not subject to a finding for recovery under Section 9.24, Ohio Revised Code, or that the Contractor has taken the appropriate remedial steps required under Section 9.24, Ohio Revised Code, or otherwise qualifies under this section. If this representation and warranty is found to be false, the Contract is void, and Contractor will immediately repay Owner any funds paid to Contractor under this Contract.

15.14. Non-Discrimination. Contractor agrees:

(a) That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Contractor, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

(b) That neither the Contractor, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.

(c) That there shall be deducted from the amount payable to the Contractor by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.

(d) That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

15.15. 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 facilities including but not limited to, common areas, 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) interact in any manner with building occupants, except where necessary to preserve the safety of building occupants.

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.

15.16. 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.

15.17. Attachments. Attachments to this Agreement include:

Exhibit A: Executed Contract Bond

Exhibit B: Sales and Use Tax Construction Contract Exemption Certificate

Exhibit C: Executed Contractor's Personal Property Tax Affidavit (O.R.C. 5719.042)

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their properly authorized representatives.

Owner:
**Berkshire Local School District Board of
Education**

Contractor:

Signature

Signature

By: _____
Printed Name and Title

By: _____
Printed Name and Title

Date: _____

Date: _____

CERTIFICATE OF FUNDS
(ORC Section 5705.41)

The undersigned, Fiscal Officer of the Owner, 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: _____
_____ Fiscal Officer

(ORC Section 5705.412)

The undersigned Treasurer, Board President and the Superintendent of the Owner, hereby certify that the Owner 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 Owner at the time of this certification, are sufficient to provide the operating revenues necessary to enable the Owner 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: _____

By: _____
Treasurer

By: _____
Superintendent

By: _____
Board President

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

State of Ohio
County of _____, ss:

_____, being first duly sworn, deposes and says that he is the
(Name)

_____ of _____ with offices located at
(Title) (Contractor)

_____, and as its duly
(Address of Contractor)

authorized representative, states that effective this ____ day of _____, 20__,

(Name of Contractor)

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

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

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

(Affiant)

Sworn to and subscribed before me by the above-named affiant this ____ day of _____, 20__.
The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

(Notary Public)

My commission expires
_____, 20__

**BID GUARANTY AND
CONTRACT BOND**
(O.R.C. § 153.571)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned _____
_____ ("Contractor") as principal and _____
_____ as surety are hereby held and firmly bound unto the **Berkshire Local
School District Board of Education**, as obligee in the penal sum of the dollar amount of the bid submitted
by the principal to the obligee on _____, 20__, to undertake the construction of the **Pre-
K Modular – Site Utilities Package Project** ("Project"). The penal sum referred to herein shall be the
dollar amount of the principal's bid to the obligee, incorporating any additive or deductive Alternates made
by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case
shall the penal sum exceed the amount of _____ Dollars (\$_____
_____). (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid,
including add Alternates. Alternatively, if the blank is filled in the amount stated must not be less than the
full amount of the bid including add Alternates, in dollars and cents. A percentage is not acceptable.) For
the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves,
our heirs, executors, administrators, successors, and assigns.

Signed this ____ day of _____, 20__.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above named principal has
submitted a bid for work on the Project.

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

Now also, if the said principal shall well and faithfully do and perform the things agreed by said
principal to be done and performed according to the terms of said contract; and shall pay all lawful claims
of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying
forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall
be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then
this obligation shall be void; otherwise the same shall remain in full force and effect; and surety shall
indemnify the obligee against all damage suffered by failure of the principal to perform the contract
according to its provisions and in accordance with the plans, details, specifications, and bills of material
therefor and to pay all lawful claims of subcontractors, materialmen, and laborers for labor performed or
material furnished in carrying forward, performing, or completing the contract and surety further agrees and
assents that this undertaking is for the benefit of any subcontractor, materialman, or laborer having a just
claim, as well as for the obligee; it being expressly understood and agreed that the liability of the surety for
any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

Signed and sealed this _____ day of _____, 20__.

PRINCIPAL

By: _____

Printed Name & Title: _____

SURETY

By: _____

Printed Name & Title: _____

Surety's Address: _____

Surety's Telephone Number: _____

Surety's Fax Number: _____

SURETY'S AGENT

Surety's Agent's Address: _____

Surety's Agent's Telephone Number: _____

Surety's Agent's Fax Number: _____

NOTE: The Contract Bond form that follows is to be used ONLY by a bidder that is awarded a contract and submits a form of bid guaranty other than the combined Bid Guaranty and Contract Bond with its bid. If a bidder submits a combined Bid Guaranty and Contract Bond, then the bid guaranty becomes the contract bond when the contract is awarded.

AIA Bid Bond or Payment and Performance Bond forms are not acceptable for this Project.

CONTRACT BOND

(O.R.C. § 153.57)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned ("Contractor"), as principal, and _____, as surety, are hereby held and firmly bound unto the **Berkshire Local School District Board of Education** ("Owner") as obligee, in the penal sum of _____ Dollars (\$), for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas, the above-named principal did on the _____ day of _____, 20____, enter into a contract with the Owner for construction of the **Pre-K Modular – Site Utilities Package Project** ("Project"), which said contract is made a part of this bond the same as though set forth herein:

Now, if the said Contractor shall well and faithfully do and perform the things agreed by the Contractor to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

Signed and sealed this _____ day of _____, 20____.

(PRINCIPAL)

(SURETY)

By: _____

By: _____

Printed Name & Title: _____

Printed Name & Title: _____

Surety's Address: _____

Surety's Telephone Number: _____

Surety's Fax Number: _____

NAME OF SURETY'S AGENT

Surety's Agent's Address: _____

Surety's Agent's Telephone Number: _____

Surety's Agent's Fax Number: _____



Sales and Use Tax Construction Contract Exemption Certificate

Identification of Contract:

Contractee's (owner's) name Berkshire Local School District Board of Education

Exact location of job/project 14155 Claridon Troy Road, Burton, Ohio 44021

Name of job/project as it appears on contract documentation Pre-K Modular - Site Utilities Package Project

The undersigned hereby certifies that the tangible personal property purchased under this exemption certificate was purchased 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 checked="" 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 checked="" 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"/>	A computer data center entitled to exemption under R.C. 122.175;
<input type="checkbox"/>	A horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;	<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 house of public worship or religious education;		
<input type="checkbox"/>	The original construction of a sports facility under R.C. section 307.696;	<input type="checkbox"/>	A hospital facility entitled to exemption under R.C. section 140.08;
<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;	<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).

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 by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Owner/Contractee

Name Berkshire LSD Board of Education

Signed by _____

Title _____

Street address 14155 Claridon Troy Road

City, state, ZIP code Burton, Ohio 44021

Date _____

Subcontractor

Name _____

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

Political Subdivision

Name Same as Owner/Contractee

Signed by _____

Title _____

Street address _____

City, state, ZIP code _____

Date _____

STATEMENT OF CLAIM FORM

Claim No. ____ for Contractor

1. Name of Contractor: _____

2. Date written claim given: _____.

3. Contractor's representative to contact regarding the claim:

Name: _____ Title: _____

Telephone No. _____ (office) FAX No. _____

E-mail: _____

4. General description of claim:

5. Contract Documents. If the claim is based upon any part or provision in the Contract Documents, including but not limited to pages in the Drawings and/or paragraphs in the Specifications, Owner-Contractor Agreement, General Conditions or Supplementary General Conditions, state upon which parts or provisions the claim is based:

6. Delay claims:

6.1 Date delay commenced: _____

6.2 Duration or expected duration of the delay, if known: _____

6.3 Apparent cause of the delay and part of critical path affected:

6.4 Expected impact of the delay and recommendations for minimizing such impact:

7. Additional compensation. Set forth in detail all additional compensation to which the Contractor believes it is entitled with respect to this claim:

8. Instructions for Completing the Statement of Claim Form ("Instructions"). The Instructions are incorporated in this Form.

9. Truth of Claim. By submitting this claim, the Contractor and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the Contractor has complied fully with the Instructions, b) the information in this State of Claim is accurate, c) the Contractor is entitled to recover the compensation in paragraph 7, and d) the Contractor has not knowingly presented a false or fraudulent claim. The Contractor by its authorized representative must acknowledge this Statement of Claim before a notary public.

CONTRACTOR: _____

By: _____

Name and Title: _____

Date: _____

CONTRACTOR'S ACKNOWLEDGMENT

State of _____,

County of _____, ss:

_____ first being sworn, states that after conscientious and thorough review, the statements made in attached Statement of Claim Form are complete and true to the best of his or her knowledge and belief.

Sworn to before me a notary public by _____ on _____, 20___. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public

WHEN COMPLETED, FORWARD A COPY OF THIS NOTICE AND STATEMENT OF CLAIM FORM TO THE OWNER AND DESIGN PROFESSIONAL.

INSTRUCTIONS FOR COMPLETING THE STATEMENT OF CLAIM FORM

1. Completing the Statement of Claim Form ("Claim Form") is a material term of the Contract. The Claim Form tells the Owner and Design Professional that the Contractor is making a Claim and that they need to act promptly to mitigate the effects of the occurrence giving rise to the Claim. The Claim Form also provides them with information so that they can mitigate such effects. The Contractor acknowledges that constructive knowledge of the conditions giving rise to the Claim through job meetings, correspondence, site observations, etc. is inadequate notice, because knowledge of these conditions does not tell the Owner and Design Professional that the Contractor will be making a Claim and most often is incomplete.
2. If the space provided in the Claim Form is insufficient, the Contractor, as necessary to provide complete and detailed information, must attach pages to the Claim Form with the required information.
3. Paragraph 4. The Contractor must state what it wants, *i.e.*, time and/or compensation, and the reason why it is entitled to time and/or compensation.
4. Paragraph 5. The Contractor must identify the exact provisions of the Contract Documents it is relying on in making its Claim. For example, if the Claim is for a change in the scope of the Contractor's Work, the Contractor must identify the specific provisions of the Specifications, and the Plan sheets and details that provide the basis for the scope change.
5. Paragraph 6. This paragraph applies to delay claims, including delays that the Contractor believes result in constructive acceleration. The Contractor must identify the cause of the delay, party or parties responsible, and what the party did or did not do that caused the delay, *i.e.*, specific work activities. The Contractor acknowledges that general statements are not sufficient, and do not provide the Owner with sufficient information to exercise the remedies available to the Owner or to mitigate the effects of the delay.

For example, if the Contractor claims a slow response time on submittals caused a delay, the Contractor must identify the specific submittals, all relevant dates, and then show on the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Also for example, if the Contractor claims it was delayed by another Contractor, the Contractor must identify the delaying Contractor, specifically what the delaying Contractor did or did not do that caused the delay, and then show the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Further by example, if the Contractor seeks an extension of time for unusually severe weather, the Contractor must submit comparative weather data along with a record of the actual weather at the job site and job site conditions.

6. Paragraph 6.4. Time is of the essence under the Contract Documents. If there is a delay, it is important to know what can be done to minimize the impact of the delay. It therefore is important that the Contractor provide specific recommendations on how to do so.
7. Paragraph 7. The Contractor must provide a specific and detailed breakdown of the additional compensation it seeks to recover. For future compensation, the Contractor shall provide its best estimate of such compensation.
8. Paragraph 8 and Acknowledgment. By submitting this Claim, the Contractor and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the Contractor has complied fully with the Instructions, b) the information in this Claim Form is accurate, c) the Contractor is entitled to recover the compensation in paragraph 7, and d) the Contractor has not knowingly presented a false or fraudulent claim. The Contractor by its authorized representative must acknowledge this Statement of Claim before a notary public.

End of Instructions

CERTIFICATE OF SUBSTANTIAL COMPLETION

Project: **Pre-K Modular – Site Utilities Package Project** Contract For: General Contract

Owner: **Berkshire Local School District Board of Education** CONTRACTOR: [insert name and address]
[redacted]

The Design Professional hereby certifies that the Date for Substantial Completion of the Contractor's Work as set forth in the Owner-Contractor Agreement is:

[redacted]
(Insert Date for Substantial Completion of the Work)

The Design Professional hereby certifies that the Date for Substantial Completion in the Contractor's Agreement with the Owner (the "Agreement"), as extended by Change Orders and Claims submitted by the Contractor that have been Finally Resolved, as defined below, is:

1. Date for Substantial Completion in the Agreement (above): [redacted]
2. Additional days added to Date for Substantial Completion by Change Order: [redacted]
3. Additional days added by Claims that have been Finally Resolved: [redacted]
4. Date for Substantial Completion in the Contract Adjusted by days under No. 2 and No. 3 [redacted]

"Finally Resolved" means that the Design Professional has made a decision (or declined to make a decision) on the Claim under the General Conditions and that any litigation regarding the Claim has been concluded.

The Design Professional certifies that the Contractor's Work to the best of the Design Professional's knowledge, information, and belief was Substantially Complete, as Substantial Completion is defined in the Contract Documents, on [redacted].

The Design Professional hereby certifies that the difference between (a) the Date for Substantial Completion adjusted by the days under No. 2 and No. 3 above and (b) the date the Contractor's Work was Substantially Complete is [redacted] days.

NOTICES OF DELAY. The Design Professional hereby certifies that all "NOTICES OF DELAY" submitted by the Contractor and described in the General Conditions are attached to this Certificate. This certification is solely for the purpose of identifying all "NOTICES OF DELAY" submitted by the Contractor and is not intended to imply that any of these NOTICES OF DELAY were properly submitted in accordance with Contract Documents or are valid.

STATEMENT OF CLAIM FORMS. The Design Professional hereby certifies that all Statement of Claim Forms described in the General Conditions and submitted by the Contractor are attached to this Certificate. This certification is solely for the purpose of identifying all Statement of Claim Forms submitted by the Contractor and is not intended to imply that any of these Statement of Claim Forms were properly submitted in accordance with Contract Documents or are valid.

PUNCHLIST ITEMS. A list of items to be completed by the Contractor is attached to this Certificate. The failure to include items on this list does not change the responsibility of the Contractor to complete its Work in accordance with the Contract Documents. The Contractor shall complete all items on the Punchlist in accordance with the Contract Documents.

Security, maintenance, utilities, damage to the Work and insurance are the responsibility of the Owner and the Contractor based on their operations pursuant to final completion of the Work.

Copies of this Certificate were provided to the Contractor and the Owner on [REDACTED]

Signature: _____

Date: [REDACTED]

**CONTRACTOR’S AFFIDAVIT AND CERTIFICATION WITH LIST OF SUBCONTRACTORS
AND SUPPLIERS WITH ANY AMOUNTS WITHHELD**

PROJECT: _____

CONTRACTOR: _____

In Support of PAYMENT APPLICATION No.: _____

For the Period Through: _____

STATE OF _____ :
 : SS,
 COUNTY OF _____ :

The undersigned after first being sworn swears that a) all previous progress payments received on account of the Work have been applied on account to discharge Contractor’s legitimate obligations associated with prior Applications for Payment; b) set forth below is a complete list of its Subcontractors and Suppliers; and c) set forth below is a complete description of all amounts withheld from any Subcontractor or Supplier and the reason why. Attach additional sheets if necessary.

Typed or Printed Name of Subcontractor or Supplier	Address of Subcontractor or Supplier	Telephone Number of Subcontractor or Supplier

Typed or Printed Name of Subcontractor or Supplier	Address of Subcontractor or Supplier	Telephone Number of Subcontractor or Supplier

WITHHOLDINGS FROM SUBCONTRACTORS AND/OR SUPPLIERS:

Typed or Printed Name of Subcontractor or Supplier	Amount Withheld	Reason for Withholding

Moreover, Contractor certifies that, except for as set forth immediately above, Contractor has paid all of its subcontractors and suppliers who were due to be paid with the proceeds of the prior Application for Payment and Contractor acknowledges that Owner is relying upon such certification when paying Contractor the amount asked for in the payment application that this Affidavit and Certification supports.

CONTRACTOR: [insert name]

BY: _____
(Signature of authorized representative)

NOTARY PUBLIC

Subscribed and sworn to before me on this date by _____ on behalf of _____.
The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Signature of Notary Public

Notary Public: _____

My Commission Expires: _____

**CONTRACTOR'S WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: **Pre-K Modular – Site Utilities Package Project**

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by the **Berkshire Local School District Board of Education** (the "Owner") with which it has a contract for the Project.

In return for said payment, and/or pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the last Application for Payment to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors, and suppliers who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Owner, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

**SUBCONTRACTORS, SUPPLIERS
WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: **Pre-K Modular – Site Utilities Package Project**

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by the Contractor ("Contractor") with which it has a contract.

In return for said payment, and/or pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the Contractor's last Application for Payment and to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Contractor, the Contractor's surety, and/or the **Berkshire Local School District Board of Education** (the "Owner"), for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form, a copy of which has been delivered to the Owner. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors and suppliers through the date of the Contractor's last Application for Payment who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Contractor, the Contractor's surety, and/or the Owner, except for any Claims made by properly and timely submitting a Statement of Claim form a copy of which has been delivered to the Owner. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

The undersigned agrees that upon receipt of the payment from the Contractor with respect to the Contractor's current Application for Payment, it shall, if applicable, immediately execute and cause to be filed or recorded a legally effective Satisfaction of Lien, Release of Lien, or any other legal instrument necessary to cause prejudicial dismissal and release of any lien, encumbrance, lawsuit, or other claim against the Contractor, the Contractor's surety and the Owner, the property where the Project is located, and/or any surety bond posted by the Contractor or the Owner to the extent of the foresaid payment. Upon request of the Contractor, the undersigned shall provide proof of having complied with this obligation.

This Affidavit is for the benefit of, and may be relied upon by, the Contractor, the Contractor's surety and the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, its Work, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit and from any liability, cost, or expense incurred as a result of any breach of this Affidavit by the undersigned.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

**CONTRACTOR'S FINAL WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: **Pre-K Modular – Site Utilities Package Project**

In consideration for payment received from the **Berkshire Local School District Board of Education** (the "Owner") in the amount requested in Contractor's Final Application for Payment to the Owner, the receipt of which is hereby acknowledged, the undersigned Contractor hereby waives and releases any rights it has or may have to any and all types of claims relating to the Project, including without limitation claims of payment, Mechanic's Lien, stop notice, equitable lien, labor and material bond, breach of contract or unjust enrichment, or any other claim against the Owner, for any labor, materials, or equipment the undersigned may have delivered or provided to the Project, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned further certifies that this Affidavit covers claims by all contractors, subcontractors, and suppliers who may have provided any labor, material, or equipment to the Project through the undersigned or at the undersigned's request. The undersigned acknowledges that all such contractors, subcontractors, sub-subcontractors and suppliers have signed an affidavit in the form of this Affidavit releasing any and all claims against the Owner, except for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Affidavit is for the benefit of, and may be relied upon by the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work of improvement, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____
day of _____. The notarial
act certified hereby is a jurat. An oath or affirmation was
administered to the signer with regard to the notarial act
certified to hereby.

Notary Public: _____

My Commission Expires: _____

**SUBCONTRACTORS, SUPPLIERS
FINAL WAIVER & RELEASE AFFIDAVIT
("AFFIDAVIT")**

Project: **Pre-K Modular – Site Utilities Package Project**

Upon receipt of payment in the amount of \$ _____ received from _____ ("Prime Contractor") the undersigned Subcontractor or Supplier waives and relinquishes all rights of lien or claim that it may have either in law or equity (including but not limited to rights under Ohio Mechanics' Lien Laws, O.R.C. 1311.01 *et seq.*) with respect to the construction project known as the **Pre-K Modular – Site Utilities Package Project** ("the Project"), for all labor, all equipment, and/or materials provided to or on behalf of the Project throughout its entirety, except for claims previously made pursuant to the agreement in place between Subcontractor or Supplier and Prime Contractor, and any lien previously perfected and remaining unreleased.

The undersigned Subcontractor or Supplier acknowledges and agrees that such payment represents final payment in full for all such labor, equipment and/or materials including retainage, if any, and that the Subcontractor or Supplier has completed its work on the Project. The undersigned Subcontractor or Supplier certifies that all amounts have been paid by the Subcontractor or Supplier for all work or materials furnished by others to the Subcontractor or Supplier for which the Subcontractor or Supplier has received previous payments from Prime Contractor, and Subcontractor or Supplier acknowledges that Prime Contractor is now making payment to the Subcontractor or Supplier in reliance upon such certification. The undersigned Subcontractor or Supplier further certifies that it will pay all amounts lawfully owing for all work or materials furnished by others to the Subcontractor or Supplier with the payment received from Contractor referenced herein.

This Affidavit is for the benefit of, and may be relied upon by, the Contractor, the Contractor's surety and the Owner. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, its Work, and real property from any and all claims, or liens that are or should have been released in accordance with this Affidavit and from any liability, cost, or expense incurred as a result of any breach of this Affidavit by the undersigned.

IN WITNESS WHEREOF, the undersigned has caused this Affidavit to be executed by its authorized representative as of the date indicated below.

THE INDIVIDUAL SIGNING THIS AFFIDAVIT REPRESENTS THAT HE/SHE IS AUTHORIZED TO DO SO.

SUBCONTRACTOR OR SUPPLIER:

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this _____ day of _____. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public: _____

My Commission Expires: _____

PRE-BID SUBSTITUTION FORM

Note. Certain brands of material or apparatus are specified. Each bid will be based on these brands, which may be referred to in the Contract Documents as Standards. The use of another brand (referred to as a substitution or proposed equal in the Contract Documents, when a bidder or the contractor seeks to have a different brand of material or apparatus than that specified approved by the Owner for use in the Project) may be requested as provided in the Instructions to Bidders.

The detailed procedures for submitting substitutions are set forth in Paragraph J of the Instructions to Bidders.

Specification Section	Brand or Name Specified	Proposed Substitution