

# Request for Proposals – July 19, 2024

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**Basis Project:** 2024 HVAC Project

**Basis Owner:** Dawson-Bryant Local School District Board of Education  
701 High Street  
Coal Grove, Ohio 45638

**Response Deadline:** August 2, 2024 at 12:00 p.m. local time

INCompliance Consulting, a national purchasing consortium, on behalf of the Basis Owner and all other states, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and nonprofit organizations that are members of the purchasing consortium (“Members”), seeks competitive Proposals from qualified firms to enter into agreements to provide the below-identified scope, subject to the terms and conditions of this Request for Proposals and the accompanying contract documents.

This solicitation is being administered by INCompliance Consulting, in its role as a national association of political subdivisions organized for the purpose of operating a joint purchasing program. This procurement is being solicited under Minnesota Statute 16C.28, and is made available to Ohio political subdivisions under Ohio Revised Code Section 9.48, et seq. Any references in the contract documents to “bid” or “bidding” are to be read consistent with the proposal process being implemented.

## Article 1 — General Information

### 1.1 Basis Project

**1.1.1 Overview.** The Basis Project is described in **Attachment 1b** and includes replacement of the boilers and chillers at Dawson-Bryant High School, Middle School, and Elementary School. For the Basis Project, commencement of services will begin in August, 2024, and completion of services will be on December 15, 2024. For projects that are based on the Master Services Agreement, as described herein, the schedule will vary dependent on the project.

**1.1.2 Pricing.** Proposer shall provide pricing for the Basis Project in accordance with Paragraph 1.1 of **Attachment 1a**. Proposer may also provide line item pricing for the additional items listed in Paragraph 1.2 of **Attachment 1a**. Proposer may also provide any additional relevant line items it deems appropriate in accordance with Paragraph 1.3 of **Attachment 1a**. Pricing provided in Paragraphs 1.1, 1.2, and 1.3 of **Attachment 1a** may be used by Members of the INCompliance national purchasing consortium for pricing on future projects in accordance with a Master Services Agreement.

**1.1.3 Master Services Agreement.** The Master Services Agreement will be between Proposer and INCompliance, and will be based on the line item pricing included in Paragraphs 1.1, 1.2 and 1.3 of **Attachment 1a**. INCompliance reserves the right to determine which line items are included in the Master Services Agreement. Proposer’s pricing will not be made available to Members unless and until a Master Services Agreement is entered into by the Selected Proposer and INCompliance. A Master Services Agreement form will be provided to the Selected Proposer. A copy of the Master Services Agreement and exhibits that will be used for the Basis Project is included with this Request for Proposals (**Attachment 2**).

**1.1.4 Prevailing Wage.** The line items in Paragraph 1.1 and 1.2 of **Attachment 1a** do not require prevailing wage. Proposer may provide a mark-up for prevailing wage in Paragraph 1.3 of **Attachment 1a**. When providing a percentage mark-up for prevailing wage rates, use the higher of State Prevailing Wage rates or Davis Bacon Prevailing Wage rates when pricing.

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## Article 2 — Proposal Submission and Selection Process

### 2.1 Preparation of Proposals

**2.1.1** The Proposal will include completion of the Pricing Proposal Form (attached hereto **Attachment 1a**), additional materials prepared by the Proposer containing information related to the Evaluation Criteria set forth in Section 2.3.3 of this Request for Proposals (limited to 20 pages), and any proposed modifications to the Agreement (as set forth in Section 2.4.4.1 of this Request for Proposals).

**2.1.2** Proposer shall base its pricing for the Basis Project on the documents provided in **Attachment 1b**.

**2.1.3** Submit one complete original Proposal to INCompliance in hard copy and an electronic copy of the Proposal prior to the Response Deadline.

**2.1.3.1** Complete all blank spaces on the Proposal Forms, as required by this Request for Proposals, in ink or typewritten, in words and figures, and in figures only where no space is provided for words, and sign the form. In the case of a discrepancy between the numbers and words written, the Basis Owner reserves the right to consult with the Proposer and determine the correct amount.

**2.1.3.2** The original Proposal shall be enclosed in a sealed opaque envelope with the Proposer's name and title of the Basis Project printed in the upper left-hand corner and addressed to:

**INCompliance Consulting**  
**Attn: Marc Doblanski**  
**100 South Third Street**  
**Columbus, Ohio 43215**

**2.1.3.3** The electronic copy of the Proposal shall be submitted as one PDF file, named with the Proposer's name and title of the Basis Project. The Proposer shall upload the electronic copy of their Proposal to the following ShareFile link:

<https://bricker.sharefile.com/r-r15a602bf3c7c417488d38233968b7221>

(To access, simply enter the ShareFile link above into your web browser, enter your email address and name and then "drag and drop" your electronic file into the folder or use the browse function to locate the file.)

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

### 2.3 Evaluation of Proposals.

**2.3.1 Standard of Award.** The Basis Owner intends to award the contract for the Basis Project to the Proposer submitting the Proposal determined to be in the best value (the "Selected Proposer"), with price being considered, but not being the determining factor. The Basis Owner reserves the right to negotiate pricing for the Basis Project with the Selected Proposer.

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

**2.3.3 Evaluation Criteria.** The Basis Owner, in its sole discretion, will evaluate the Proposers and Proposals to determine which Proposal is the best value. In making such determination, the Basis Owner may consider the following criteria in the following relative importance, and any such other criteria as it determines proper:

**2.3.3.1 Quality of the Proposer's Previous Performance. 15 Points.**

- .1 Proposer should have a record of consistent customer satisfaction and of consistent completion of projects, including projects that are comparable to or larger and more complex than Basis Project, on time and in accordance with the respective contract documents. If Proposer's management (i.e., president, chairman of the board, or any director) operates or has operated another construction company, Basis Owner may consider the work history of that company in determining Proposer's qualifications and experience.
- .2 Basis Owner may consider Proposer's prior experience on other projects for the Basis Owner, including Proposer's demonstrated ability to complete its work on these projects and on time, its ability to work with Owner, and to minimize change orders.
- .3 Proposer authorizes Basis Owner and its representatives to contact the owners and design professionals on projects on which Proposer has worked, and authorizes and requests such owners and design professionals to provide Basis Owner with a candid evaluation of Proposer's performance. By submitting its Proposal, Proposer agrees that if it or any person at its urging, directly or indirectly, brings an action against any of such owners or design professionals or their employees as a result of or related to such evaluation and such action is not successful, Proposer will reimburse such owners, design professionals and/or their employees for all legal fees and expenses incurred by them that are related to such legal action, including the cost of collection. This obligation is expressly intended for the benefit of such owners, design professionals, and their employees.

**2.3.3.2 Proposer's Resources. 15 points.** Proposers should have the financial ability to complete the Basis Project successfully and on time and the experience, adequacy, and numbers of Proposer's work force/project team.

- .1 Proposers must be able to provide bonding, commercial general insurance coverage, and worker's compensation insurance coverage as describe in the Form of Agreement (**Attachment 3**).
- .2 The qualifications of individuals in the Proposers' organization will be considered. Therefore, Proposers should provide detailed information (name, title, and experience) for the individuals that will be assigned to service the Basis Owner.
- .3 Anticipated Project Team - Identify the Project Team for the Basis Project, including sub-contractors, the percentage of work to be performed by each firm along with the address of each sub-contractor's office. Replicate a completed version of the table below in your proposal.

Firm Name	Location	Date of Establishment	Role	Percentage of Contract

**2.3.3.3 Compliance with Federal, State, and Local Laws, Rules, and Regulations. 10 points.** Proposers should have a record of consistent compliance with federal, state, and local laws, rules, and regulations, including but not limited to the Occupational Safety and Health Act.

**2.3.3.4 Proposer's Subcontractors. 15 points.** The foregoing information with respect to any of the subcontractors that Proposer intends to use on the Basis Project.

**2.3.3.5 Participation in a Drug-Free Workplace Program. 10 points.** Proposer's participation in a drug-free workplace program through the Ohio Bureau of Workers Compensation or a program approved by the Bureau of Workers Compensation.

**2.3.3.6 Project Approach/Technical Understanding. 10 points.** Proposers should provide a tentative project schedule for the Basis Project, alternates to the Basis Project (if any), and any proposed alternative plans for the Basis Project.

**2.3.3.7 Cost. 15 points.** The maximum score for cost will be assigned to the Proposer offering the lowest price. The second lowest price will receive the second highest score in this category, and so on.

**2.3.3.8 Other Essential Factors. 10 points.** The Basis Owner may award the maximum of 10 points to one Proposer for other essential factors as determined by the Basis Owner at its sole discretion. The Basis Owner has the option to also award zero to nine points to the remaining Proposers' scores without limitation.

**2.3.4** Upon request of the Basis Owner, the Proposer will complete and submit to Basis Owner, within three (3) days of the request, the following documents:

**2.3.4.1** The list of all proposed subcontractors, suppliers, and manufacturers for the Basis Project.

**2.3.4.2** A proposed schedule for the Basis Project.

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

**2.3.5** After approval by Basis Owner of the list of proposed subcontractors, suppliers, and manufacturers submitted by the successful Proposer, the list may not be changed unless written approval of the change is authorized by Basis Owner. Failure to timely submit requested information may result in the determination that Proposer's Proposal is not the best value.

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

## **2.4 Negotiation of Agreements.**

**2.4.1** The Basis Owner will negotiate and enter into an agreement with the Selected Proposer for the Basis Project (the "Owner-Contractor Agreement").

**2.4.2** INCompliance will negotiate and enter into a Master Services Agreement with the Selected Proposer. The Proposer acknowledges that the Master Services Agreement is not exclusive and that INCompliance may negotiate Master Services Agreements with other vendors for the same or similar scopes.

**2.4.3** Members of INCompliance, a national purchasing consortium, may negotiate additional contracts with the Selected Proposer based on the Master Services Agreement.

**2.4.4** A copy of the Owner-Contractor Agreement and exhibits that will be used for the Basis Project is included with this Request for Proposals (**Attachment 3**).

**2.4.4.1** If the Proposer would like to propose any modifications to the Owner-Contractor Agreement provided with this Request for Proposals, the Proposer must submit with its Proposal its proposed modification language as part of its completed Proposal with specificity (identifying paragraph numbers and language changes) on a separate page titled "Proposed Modifications to the Owner-Contractor Agreement." Proposed modifications submitted after the Response Deadline will not be considered by the Basis Owner. Any proposed modifications may be taken into account in determining whether the Proposal is the best value. The Basis Owner will determine, in its sole discretion, whether any proposed modifications to the Owner-Contractor Agreement will be accepted.

**2.4.5** If for any reason the parties are unable to negotiate and execute the Master Services Agreement and Owner-Contractor Agreement, the Basis Owner and INCompliance may suspend negotiations with the Selected Proposer and initiate negotiations with the next Proposer determined to be the best value, and so on, until the contracts are fully executed, or the Basis Owner rejects all Proposals.

### **Article 3 — Additional Instructions**

#### **3.1 Questions**

**3.1.1** All questions must be submitted in writing to Marc Doblanski, INCompliance Consulting, at [mdoblanski@incomplianceconsulting.com](mailto:mdoblanski@incomplianceconsulting.com) by 2:00 p.m. two (2) days prior to the submission deadline. The questions and answers will be emailed to all individuals and firms that were provided with a copy of the Request for Proposals.

**3.1.2** The Basis Owner may also email other related information to the individuals and firms that were provided with a copy of the Request for Proposals.

#### **3.1.3 Addenda.**

**3.1.3.1** Should any question prompt INCompliance or the Basis Owner to amend the Request for Proposal, a notice will be sent to all individuals and firms that were provided with a copy of the Request for Proposals. Addenda will be deemed to have been validly given if emailed or otherwise furnished to each Proposer's contact person of record.

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

#### **3.2 Proposal Certifications**

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

**3.2.1.1** the Proposer has carefully reviewed the Request for Proposals to become familiar with the requirements for the Basis Project and has, to the extent applicable, included all costs necessary to provide labor and materials for the Basis Project in its Proposal, including incidentals, whether or not specifically called for in the Request for Proposals and to become familiar with the limitations and conditions related to the Basis Project covered by the Proposal and has included in the Proposal a sum to cover the cost of such items;

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

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

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

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

#### **3.3 Cancellation and Rejection; Waiver of Minor Irregularities**

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

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

**3.3.2.1** the Owner-Contractor Agreement or the Master Services Agreement cannot be awarded under ORC Section 9.24 because the recommended Proposer has a finding for recovery issued by the Auditor of State, and the finding for recovery is unresolved;

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

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

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

**3.3.3** The Basis Owner may waive minor irregularities in its sole discretion.

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

**3.5 Proposal Withdrawal.** If the Selected Proposer withdraws its proposal after selection, the Basis Owner may award the contract for the Basis Project to the firm next determined to be the best value.

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

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

**3.8 Expenses of Proposers.** The Basis Owner accepts no liability for the costs and expenses incurred by the Proposers in responding to this Request for Proposals, responding to clarification requests and discussion meetings, preparing resubmittals, potential interviews, subsequent negotiations, and any other activities included as part of this procurement process. Each Proposer shall prepare the required materials and submittals and attend meetings and interviews at its own expense.

## **Article 4 — Attachments**

**4.1** Attachment 1. Proposal Forms

**4.1.1** Attachment 1a. Proposal Form

**4.1.2** Attachment 1b. Basis Project Description

**4.2** Attachment 2. Master Services Agreement

**4.3** Attachment 3. Form of Agreement for the Basis Project

**4.3.1** Exhibit A: Contract Bond

**4.3.2** Exhibit B: Tax Exemption Certificate

**4.3.3** Exhibit C: Contractor's Personal Property Tax Affidavit (R.C. 5719.042)

# Attachment 1a: Proposal Form

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**Proposer's Name:** \_\_\_\_\_  
**Proposer's Address:** \_\_\_\_\_  
**Principal Contact:** \_\_\_\_\_  
**Telephone Number:** \_\_\_\_\_  
**Email Address:** \_\_\_\_\_  
**Federal Tax ID Number:** \_\_\_\_\_  
**Date Submitted:** \_\_\_\_\_

## Article 1 — Pricing Proposal

**1.1 Basis Project Pricing.** The Proposer will perform all work identified in the contract and Request for Proposals for the Basis Project, which includes HVAC services as described within **Attachment 1b**, not including Alternates, if any, for the lump sum of:

**1.1.1 Basis Project Lump Sum:**

\_\_\_\_\_ \$ \_\_\_\_\_  
*Proposed Price in Words* *Proposed Price in Numerals*

**1.1.1.1** Proposer must list any elements to be taken into consideration for installation, maintenance, upgrades and turn-key services broken down in Unit Prices either through the proposed unit price schedule or through an alternate unit price schedule provided by the Proposer. The Proposer may provide pricing through additional pages as necessary.

Proposed Unit Price Schedule:

Number	Description	Quantity	Units	Price per Unit	Total Cost
1	Remove and Dispose Existing Boiler	Each			
2	Remove and Dispose Existing Chiller	Each			
3	Packaged Screw Chiller	Each			
4	Packaged Scroll Chiller	Each			
5	Boiler (Replace to Match Existing Boiler)	Each			
6	Boiler (95% Efficiency)	Each			
7	Chiller Controls	Each			
8	Boiler Controls	Each			
9	Extended Warranty	Year			

Alternate Unit Price Schedule (to be filled in by the Proposer if the Proposed Unit Price Schedule is insufficient):

Number	Description	Quantity	Units	Price per Unit	Total Cost

**1.2 Additional Unit Prices.** Proposer may provide additional Unit Prices for Line Items inserted below to be included in the Master Services Agreement at INCompliance's sole discretion. The Proposer may provide pricing through additional pages as necessary.

Number	Description	Quantity	Units	Price per Unit	Total Cost

**1.3 Optional Percentage Mark-Up for Prevailing Wage.** The Proposer may provide a percentage each line item will be marked-up if prevailing wage is required for a project under the Master Services Agreement:

<i>Proposed Percentage in Words</i>	%	<i>Proposed Percentage in Numerals</i>
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**Article 2 — Addenda**

**2.1** Receipt of the following Addenda is hereby acknowledged:

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

**Article 3 — Proposer's Certifications**

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

**3.1.1** Proposer has read and understands the Request for Proposals and agrees to comply with all requirements of the Request for Proposals.

**3.1.2** Proposer represents that the Proposal is based upon the Request for Proposals, including but not limited to the specifications, if any.

**3.1.3** Proposer has visited the Project site, become familiar with local conditions and has correlated personal observations about the requirements of the Request for Proposals. Proposer has no outstanding questions regarding the interpretation of the Request for Proposals based upon what it has observed and could reasonably have been expected to have observed.

**3.1.4** Proposer has carefully reviewed the Request for Proposals to become familiar with the requirements for the Work and has included all costs necessary to provide labor and materials for the Work in this Proposal, including incidentals, whether or not specifically called for and to become familiar with the limitations and conditions related to the Work covered by the Proposal and has included in this Proposal, a sum to cover the cost of such items.

**3.1.5** Proposer and each person signing on behalf of Proposer certify, and in the case of a joint or combined proposal, each party thereto certifies as to such party's organization, under penalty of perjury, that to the best of the undersigned's knowledge and belief:

**3.1.5.1** the Proposal amount, any Unit Prices and any Alternate items in the Proposal have been



arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such Base Proposal, Unit Prices or Alternate Items with any other Proposer;

**3.1.5.2** unless otherwise required by law, the Proposal amount, any Unit Prices and any Alternate items in the Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to the proposal opening, directly or indirectly, to any other Proposer who would have any interest in the Proposal amount, Unit Prices or Alternate items; and

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

**3.1.5.1** the Proposer is not the subject of an unresolved finding for recovery issued by the Auditor of State under ORC Section 9.24 or that Proposer has taken the appropriate remedial steps required under Section 9.24, ORC, or otherwise qualifies under this section;

**3.1.5.2** the Proposer is not debarred under ORC Section 153.02;

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

**3.1.5.4** the Proposer has not violated ORC Section 3517.102 by exceeding allowable campaign contributions.

**3.1.6** Proposer will enter into and execute the Agreement with the Owner, if an Agreement is awarded on the basis of this Proposal.

**3.1.7** Proposer certifies that the upon the award of an Agreement, the Proposer will make a good faith effort to ensure that all of the Proposer's employees, while working on the site of the Project, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

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

Signed and Submitted:

\_\_\_\_\_  
*Proposer's Name*

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name & Title*

\_\_\_\_\_  
*Date*

**Attachment 1b**

**Dawson-Bryant Local School District**

**Basis Project Description**

## **Scope of Work – 2024 HVAC Project**

The Project will include the replacement of the HVAC systems (boilers chillers) at all three district school buildings (elementary, middle, and high school). The scope of work for the project will include, but is not limited to, the following:

- Remove & dispose of existing boilers & chillers at all three district buildings;
- Provide & install new boilers & chillers at all three district buildings;
- All necessary insulation repair/replacement, electrical work, and startup costs are to be included in the unit prices that are submitted by the proposer;
- Provide pricing for chiller and boiler controls;
- Provide pricing for extend warranties;
- Extension of concrete pads for chillers;
- Proposers are asked to provide any alternative work items for the Project and provide unit pricing in Section 1.2 of the Proposal Form (Attachment 1a); and
- Work is anticipated to commence in August 2024, and be substantially complete by December 15, 2024.

# Master Services Agreement (Ohio)

## for R.C. 9.48 Procurement

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This Master Services Agreement (Ohio) No. ICNPC-OH-24-000 (this "Master Services Agreement") is entered into by and between **INCompliance Consulting National Purchasing Consortium**, a national association of political subdivisions operating a joint purchasing program in accordance with Section 9.48 of the Ohio Revised Code, with an address of 100 S 3rd St, Columbus, OH 43215 ("ICNPC") and \_\_\_\_\_, with an address of \_\_\_\_\_ (the "Contractor") (collectively, ICNPC and the Contractor referred to as the "Parties"), and effective as of the date this Master Services Agreement is executed by ICNPC.

### RECITALS

**A.** This Master Services Agreement is entered into by ICNPC, in accordance with Section 9.48 of the Ohio Revised Code, to establish uniform pricing for various materials, equipment, supplies, and services for installation, maintenance, and repairs.

**B.** ICNPC procured this Master Services Agreement in accordance with Minnesota Statute 16C.28, and is made available to Ohio political subdivisions as an exception to the bidding statute under Ohio Revised Code Section 9.48, et seq.

**C.** For the purposes of establishing uniform pricing for members of ICNPC to utilize, the Contractor will base the all Owner Contracts (defined herein) entered into under this agreement on the Price Schedule attached hereto as Exhibit "A". The Basis Owner for the Basis Project identified in Exhibit "A" is Granville Exempted Village School District Board of Education.

**D.** ICNPC's member entities (referred to as "Owners" herein) may participate in this Master Services Agreement, pursuant to Section 9.48 of the Ohio Revised Code, without the need to engage in competitive bidding.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### Article 1 — Scope of Work

#### 1.1 Contract Documents.

**1.1.1** The Contract Documents for this Master Services Agreement consist of the following documents and any subsequent modifications made to this Master Services Agreement after its execution, all of which are incorporated into this Master Services Agreement:

**1.1.1.1** This Master Services Agreement and all exhibits hereto;

**1.1.1.2** The Request for Proposals issued by ICNPC in relation to this Master Services Agreement; and

**1.1.1.3** All RFP Materials identified in the Request for Proposals issued by ICNPC in relation to this Master Services Agreement.

#### 1.2 Owner Contracts.

**1.2.1** Upon request of an Owner, the Contractor will enter into a contract directly with the Owner in the form attached hereto as Exhibit "B" (each an "Owner Contract") to perform the services, as more particularly described in the Owner Contract. The form attached hereto as Exhibit "B" shall be the exclusive form of the Owner Contract.

The Contractor acknowledges that the form of Owner Contract and exhibits thereto attached as Exhibit "B" are the intellectual property of Bricker Graydon LLP and are in draft form. The draft documents require finalization prior to execution. Bricker Graydon LLP will prepare final, executable copies of the Owner Contract.

**1.2.2 Design Professional Services.** Unless otherwise requested by the Owner and expressly written in the Owner Contract, all Design Professional services needed for a given project shall be provided by Contractor. In doing so, the Contractor shall use its best efforts, best skills and best judgment in providing design professional services for the Project in accordance with professional standards and quality expected of design professionals in Ohio with above-average experience with projects similar in design and function to that of the Project (the "Standard of Care"). In performing services hereunder, Contractor shall determine the requirements of the applicable edition of the Ohio Basic Building Code and any other applicable Building Codes so that the plans and specifications relating to any Work and the resulting Project will comply with all such requirements. Any references in the Contract Documents to "Design Professional" are deemed to refer to the Contractor.

## Article 2 — Term of Master Services Agreement

**2.1 Initial Term.** The term of this Master Services Agreement shall commence on the Effective Date and, unless terminated in accordance with the terms herein, shall continue for a one (1) year period following the Effective Date (the "Term") and shall remain in effect, but only with respect to each Owner Contract, for so long thereafter as any Work described in such Master Services Agreement remains uncompleted.

**2.2 Renewal.** Notwithstanding Section 2.1, unless the Master Services Agreement terminated in accordance with the terms herein, the Term of this Master Services Agreement shall automatically renew in accordance with the terms and conditions herein for successive periods of one (1) year each at the end of each then-current Term.

**2.2.1 Adjustment of Price Schedule.** In the event this Master Services Agreement is renewed for an additional term pursuant to Section 2.2, the Contractor may substitute the Price Schedule attached hereto as Exhibit "A" with a new Price Schedule which increases any or all unit prices; provided, however, that such increases, if any, shall not exceed the lesser of (1) a percentage equal to the percent change in the Consumer Price Index for All Urban Consumers, U.S. City Average, published by the Bureau of Labor Statistics of the United States Department of Labor, All Items (1982-84=100) for the preceding one (1) year term; or (2) three percent.

## Article 3 — Termination

**3.1 Termination by ICNPC for Cause.** ICNPC may immediately terminate this Master Services Agreement for the Contractor's breach of this Master Services Agreement or the breach of any Owner Contract. Such termination is without prejudice to any other remedy ICNPC may have against the Contractor.

**3.2 Termination by ICNPC for Convenience.** ICNPC may terminate this Master Services Agreement for convenience upon not less than thirty (30) days' written notice to the Contractor. Such termination for convenience, however, will not operate to terminate any Owner Contracts entered into before the effective date of termination.

**3.3 Termination by Contractor.** The Contractor may terminate this Master Services Agreement, by providing written notice of its intention to terminate this Agreement pursuant to this Section not less than sixty (60) days prior to the end of the then-current Term. Such termination for convenience, however, will not operate to terminate any Owner Contracts entered into before the effective date of termination.

## Article 4 — Compensation

**4.1 Contractor's Compensation.** There is no compensation owed to the Contractor under this Master Contract. The Contractor's compensation for all services shall be set forth in the individual Owner Contracts, based on the Price Schedule.

**4.2 Fees.** For each Owner Contract entered into under this Master Services Agreement after the Owner Contract executed for the initial Basis Project, the Contractor shall pay ICNPC a document preparation fee equal to \$1,000.00 ("Doc Prep Fee"), plus an amount equal to one and a half percent (1.5%) of the Base Bid Amount plus Accepted Alternates included in the Contract Sum established by the Owner Contract as a participation fee ("Participation Fee"). The Participation Fee may be collected by Contractor from Owner as a condition of the Owner Contract. The Participation Fee will be waived for each Owner Contract entered into under this Master Services Agreement with the Basis Owner of the Basis Project and will not be collected by Contractor from Basis Owner. The Doc Prep Fee will be paid through ICNPC by Contractor, which will be collected by Contractor from Owner as a condition of the Owner Contract, unless otherwise agreed between Bricker Graydon LLP and Owner.

## Article 5 — Miscellaneous

**5.1 Breach of Owner Contracts.** It is understood that an individual Owner's material breach of an Owner Contract shall not be imputed to ICNPC and shall not entitle the Contractor to any remedy under this Master Services Agreement.

**5.2 Modification.** No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party, which in the case of Owner requires the signature of Owner's President, Superintendent or Treasurer acting under the authority of a specific resolution of Owner. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Paragraph.

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

**5.4 Third Parties.** Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of a third party against either Owner or Contractor.

**5.5 Law and Jurisdiction.** All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligations of the parties will be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, must be brought in the Franklin County Common Pleas Court, and each party hereby expressly consents to the jurisdiction of such court.

**5.6 Notices.** Notices, requests, or demands by either party must be in writing, unless otherwise expressly authorized, and personally served; forwarded by expedited messenger service; sent by facsimile transmission; sent by electronic mail with delivery confirmation; or be given by registered or certified mail, return receipt requested, postage prepaid, and addressed the party at the address set forth at the beginning of this Agreement. Any party may change its address by giving notice hereunder. All notices, requests, and demands will be deemed received upon receipt in the case of personal delivery or delivery by expedited messenger service, including leaving the notice at the address provided herein during normal

business hours; upon the expiration of 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.

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

**5.8 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 that it was not made in good faith.

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

**5.10 Compliance with Laws and Regulations.** Contractor, at its expense, must comply with all applicable federal, state, and local laws, rules, and regulations applicable to all work.

**5.11 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.

**5.12 Entire Agreement.** This Master Services 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.

**IN WITNESS WHEREOF**, the Parties have executed this Master Services Agreement as of the date set forth below:

**INCompliance Consulting National Purchasing Consortium**

[Redacted Signature]

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name & Title*

\_\_\_\_\_  
*Printed Name & Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*



**Exhibit "A"**

Unit Price Schedule

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# **Exhibit "B"**

## Form of Owner Contract

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The form of Owner Contract follows.

## OWNER-CONTRACTOR AGREEMENT

**Owner:**

**Dawson-Bryant Local School District Board of Education**  
701 High Street  
Coal Grove, Ohio 45638

**Project: 2024 HVAC Project**

**Location:**

**Dawson-Bryant Elementary School**  
4503 State Route 243  
Ironton, Ohio 45638

**Dawson-Bryant Middle School**  
1 Hornet Lane  
Coal Grove, OH 45638

**Dawson-Bryant High School**  
1 Hornet Lane  
Coal Grove, OH 45638

**Contractor:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Contact:** [REDACTED]  
**Phone:** [REDACTED]  
**Email:** [REDACTED]

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, replacement of the boilers at Dawson-Bryant High School and the chillers at Dawson-Bryant High School and Elementary School (the "Project"). The Work was procured through a proposal process outside the statutory bidding requirements for public school districts set forth in Ohio Revised Code 3313.46, based on an award issued by INCompliance Consulting in its role as a national association of political subdivisions organized for the purpose of operating a joint purchasing program. Specifically, this procurement was solicited under Minnesota Statute 16C.28, and is made available to Ohio political subdivisions as an exception to the bidding statute under Ohio Revised Code Section 9.48, et seq.

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.

### **2. CONTRACT DOCUMENTS.**

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

- A. Public Notice;

- B. Request for Proposals;
- C. Proposal Form;
- D. Owner-Contractor Agreement, including all exhibits attached hereto;
- E. Executed Contract Bond;
- F. Sales & Use Tax/ Construction Contract Exemption Certificate;
- G. Addenda issued;
- H. Executed Contractor's Personal Property Tax Affidavit (O.R.C. 5719.042);
- I. 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. There is no Design Professional for the Project.** Any incidental design services needed for the Project shall be provided by the Contractor. In doing so, the Contractor shall use its best efforts, best skills, and best judgment in providing such services for the Project in accordance with the professional standards and quality expected of professionals licensed to practice in Ohio with experience with projects similar in design and function to that of the Project. In performing services hereunder, the Contractor shall determine the requirements of the applicable law, rules, and regulations of jurisdictions having authority, including, but not limited to, building codes, so that the Work and the resulting Project will comply with all such requirements.

**3.1.1. Submittals.** Contractor shall provide the Owner with shop drawings, diagrams, and other data prepared for the Work identifying the plan for the Project, not to be incorporated as Contract Documents, but for the purpose of demonstrating to the Owner how the Contractor proposes to conform to the Work expressed in the Contract Documents. These submittals shall be provided to the Owner prior to commencement of the Work and with reasonable promptness and in such sequence as to cause no delay in the Work should the Owner object to the plan. Owner is not required to provide approval of the submittals, but, if provided, such approval is for the limited purpose of acknowledging conformance of the intent for the Work expressed in the Contract Documents, and does not relieve the Contractor of its obligations under section 14 (warranties) or other provisions of the Contract Documents, nor constitute approval of safety precautions, or construction means, methods, techniques, sequences, or procedures.

**3.2.** Bradley D. Miller, Treasurer, 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 **December 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 **21** 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.** Accepted Alternates, included in the Contract Sum:

Alternate No.	Description	Amount
		\$ [redacted]
		\$ [redacted]
		\$ [redacted]
		\$ [redacted]
		\$ [redacted]

**6.1.3.** Allowances included in the Contract Sum:

Allowance Description	Amount
	\$ [redacted]
	\$ [redacted]
	\$ [redacted]

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.

**6.1.4.** Unit Prices - If directed by the Design Professional, such Work will be paid for in accordance with the Unit Prices bid and identified below:

Item	Description	Unit	Price Per Unit
			\$ [redacted]
			\$ [redacted]

**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 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 of its Work on the Project by the Date for Substantial Completion 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, as may be modified in accordance with the Contract Documents, that the Contractor fails to achieve Substantial Completion.

<b>Contract Sum Amount</b>	<b>Dollars Per Day</b>
\$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

**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 complete by the foregoing date and that the damages that may result from the failure to substantially complete the work by the foregoing date are uncertain and difficult to ascertain. No waiver of consequential damages shall preclude the Owner from recovering liquidated damages.

**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 (15<sup>th</sup>) day of the month; payment applications received after the 15<sup>th</sup> 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) 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



- (c) 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.

**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 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.

**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)

**Exhibit D:** Contractor's Pricing Proposal, dated [REDACTED], 2024, and incorporated to the extent not inconsistent with this Agreement. Any terms and conditions included in the Proposal are expressly rejected by the Owner.

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:**  
**Dawson-Bryant Local School District Board of Education**

**Contractor:**  
[REDACTED]

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*Signature*

By: \_\_\_\_\_

*Printed Name and Title*

Date: \_\_\_\_\_

---

*Signature*

By: \_\_\_\_\_

*Printed Name and Title*

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

**Contract Bond**  
(ORC § 153.57)

Exhibit A

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

\_\_\_\_\_ as Principal  
*Contractor Name*

at \_\_\_\_\_  
*Contractor Address*

and \_\_\_\_\_, as Surety,  
*Surety Name*

are hereby held and firmly bound unto the **Dawson-Bryant Local School District Board of Education** (the "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 \_\_\_\_\_, 202\_, enter into a contract with the Owner, for the work specified for **2024 HVAC Project**, which contract is made a part of this bond the same as though set forth herein:

Now, if the said Principal shall well and faithfully do and perform the things agreed by the 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; 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 therefor shall in any wise affect the obligations of said Surety on its bond, and the Surety does hereby waive notice of any such modifications, omissions, or additions.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

**Principal:**

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name & Title*

**Surety Information**

\_\_\_\_\_  
*Street Address*

\_\_\_\_\_  
*City State ZIP*

\_\_\_\_\_  
*Telephone Number*

**Surety:**

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_, **Attorney-in-Fact**  
*Printed Name*

**Surety Agent's Information**

\_\_\_\_\_  
*Agency Name*

\_\_\_\_\_  
*Surety Street Address*

\_\_\_\_\_  
*City State ZIP*

\_\_\_\_\_  
*Telephone Number*

\_\_\_\_\_  
*Email Address*



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

**Identification of Contract:**

Contractee's (owner's) name Dawson-Bryant Local School District Board of Education

Exact location of job/project Various locations throughout the District

Name of job/project as it appears on contract documentation 2024 HVAC Project

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

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

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

**Prime Contractor**

Name \_\_\_\_\_

Signed by \_\_\_\_\_

Title \_\_\_\_\_

Street address \_\_\_\_\_

City, state, ZIP code \_\_\_\_\_

Date \_\_\_\_\_

**Owner/Contractee**

Name Dawson-Bryant LSD Board of Education

Signed by \_\_\_\_\_

Title \_\_\_\_\_

Street address 701 High Street

City, state, ZIP code Coal Grove, Ohio 45638

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 \_\_\_\_\_

# Exhibit C

## 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\_\_