



PALMERTON AREA SCHOOL DISTRICT

CENTRAL ADMINISTRATION OFFICE
680 Fourth Street
Palmerton PA 18071

Phone (610) 826-7101
Fax (610) 826-4958
www.palmerton.org

Engineer of Record (EOR) Services Proposal and Conditions

THE PALMERTON AREA SCHOOL DISTRICT (“SCHOOL DISTRICT”) IS REQUESTING PROPOSALS FROM PROFESSIONAL ENGINEERING FIRMS FOR ENGINEER OF RECORD SERVICES, THE DUTIES OF WHICH ARE SUMMARIZED IN ATTACHMENT “A”. SUCH PROPOSALS SHALL BE SUBMITTED TO RYAN P. KISH, BUSINESS MANAGER, PALMERTON AREA SCHOOL DISTRICT 680 FOURTH STREET, PALMERTON, PA 18071. THIS INVITATION TO SUBMIT A PROPOSAL SHALL EXPIRE ON AUGUST 20th, 2019 AT 2 P.M. AT WHICH TIME WILL BE OPENED FOR REVIEW.

1. Indicate on the lower left-hand corner of the envelope: **“Engineer of Record (EOR) Services”**.
2. Firms are requested to submit clarifications in writing concerning any provisions of the specifications and duties and responsibilities as set forth in Attachment A.
3. The Palmerton Area School District reserves the right to waive any informalities in the proposal and shall have full authority to reject any of such proposals furnished by the firms, which in the opinion of the school district are not in strict compliance and conformity with the purpose and duty of the Engineer of Record, in the best interest of the school district. The decision of the school district shall be final without exception or appeal.
4. All proposals shall be effective for ninety (90) days following the opening of the proposals, and no proposal shall be withdrawn prior to the date for opening as stated above.
5. Enclosed as attachment A the “Request for Proposals”, Sections I, II, III, and Appendix B.
6. A list of references of businesses and organizations, in which the firm has performed services, must be provided with the submitted proposal. Include the company name, address, telephone number, and contact person.
7. Human Relations Act: The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P.L. 744) (43 P.S. Section 951, et seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, by employers, employment agencies, labor organizations, contractors and others. The contractor shall agree to comply with the provisions of this Act as amended that is made part of this specification. Your attention is directed to the language of the Commonwealth's non-discrimination clause in 16 PA. Code 49.101.
8. Clearances: the successful contractor shall provide the following clearances for workers/employees who will be performing services on site in the district: Act 34, Act 151, as amended, and FBI background check.
9. Attached to this request for proposal is a non-collusion affidavit, with instructions, that must be completed, notarized, and returned with the proposal.

Request for Proposals
Engineer of Record (EOR) services

For:
Palmerton Area School District

RFP Issue Date: July 15, 2019

ISSUED BY:

Ryan Kish
Business Manager
Palmerton Area School District

Proposals received by the date and time listed herein will be considered. One (1) original, one (1) copy, and an electronic version (via flash drive or CD or email) of each Proposal shall be delivered to:

Ryan Kish
Business Manager
Palmerton Area School District
680 Fourth Street
Palmerton, PA 18071

**Section I
General Information**

I-1 Purpose

This Request for Proposals (RFP) provides interested professional consultant(s) with sufficient information to prepare and submit proposals for consideration by the District to perform EOR services.

I-2 Issuing Office

This RFP is being issued by the office listed below. The issuing office is the sole point of contact for this RFP. Please refer all inquiries to:

*Ryan Kish
Business Manager
rkish@palmerton.org
610-826-7101*

Any addenda will be made available to registered RFP holders. Questions must be submitted in writing by email by the date & time indicated below to the issuing office representative listed above.

From the issue date of this RFP until a determination is made regarding the selection of a Respondent, all contacts concerning this RFP must be made through the issuing office. Only information supplied by the issuing office, including responses to questions regarding the RFP, should be used in preparing proposals. All other contacts or information received regarding the subject prior to the release of this RFP should be disregarded in preparing responses. Any violation of this condition is cause for the District to reject a proposal. If it is later discovered that any violations have occurred, the District may reject the proposal.

I-3 Schedule

Request for Proposals Released	July 15, 2019
Deadline for Questions	July 22, 2019 - 3 pm
Addendum issued (if required)	July 24, 2019
Deadline for Proposals	August 20, 2019 - 2 pm
Interviews (if required)	September 3, 2019
Board approval	September 17, 2019

I-4 Scope

This RFP contains instructions governing the responses to be submitted and the material to be included therein, a description of the services to be provided,

requirements which must be met to be eligible for consideration, and contract terms and conditions.

I-5 Pre-Proposal Site Visit

Pre-proposal site visit will be available on July 31, 2019 at 10 A.M. Pre-proposal site visits are NOT required. Contact Joe Faenza, Director of Facilities at 610-826-3155 ext. 2201 to arrange.

I-6 Rejection of Proposals

The District reserves the right to reject any and all responses received from Respondents as a result of this RFP and to cancel this solicitation at any time prior to the execution of any contract.

I-7 Contract

- A. The selected Respondent will be required to sign a standard contract (see Appendix 'A').
- B. The Respondent will be deemed to have accepted the contract terms and conditions, except as are expressly called out in the Respondent's proposal. If exceptions are taken, the Respondent must submit a "redlined" version of the term or condition showing all modifications proposed by the Respondent. Respondent's willingness to accept the contract as-is shall be an affirmative factor in the evaluation of the Respondent's proposal.

I-8 Incurring Costs

The District is not liable for any costs or expenses incurred by Respondents in the preparation or submission of their proposals or for attendance at any conferences or meetings related to this RFP.

I-9 Prime Respondent/Subcontracting

The selected Respondent will be considered a prime professional with respect to any work awarded. Any use of subcontractors must be approved in writing by The District.

I-11 Economy of Preparation

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Respondent's ability to meet the requirements of this RFP.

I-12 Disclosure of Proposal Contents

Respondents' proposals will become part of the contract award resulting from this RFP and are not; therefore, confidential.

I-13 **Addenda to the RFP**

If it becomes necessary to revise any part of this RFP, addenda will be provided via email to all registered RFP holders.

I-14 **Response Date**

To be considered, proposals must be received by the issuing office on or before the due date listed above.

I-15 **Proposals**

To be considered, proposals must consist of a complete response in the format stated herein. For this RFP, the proposal, as submitted, must remain valid during the entire solicitation, award, and contract finalization process.

I-16 **Interviews**

If necessary, respondents who meet the initial qualification criteria may be required to interview on the date indicated above. All costs associated by such presentations will be borne by the Respondent.

I-17 **Contract Award**

- A. The District reserves the right to (a) award a single contract for all services, or (b) not award a contract.
- B. This RFP shall not result in an exclusive rights contract. The District reserves the right to engage additional consultants for select work.

I-18 **Place of Performance**

Respondent's address and place of business, with visits to District facilities as required to complete the Scope of Work.

I-19 **Period of Performance**

The District expects to award a contract as indicated above. The District intends to issue a one-year contract with two one-year renewal provisions at the sole option of the District dependent upon continuity of all terms and conditions of the contract, including rates.

I-20 **Clearances**

The selected Respondent shall provide background clearances for all personnel who will perform work at District facilities in accordance with CPSL, PA School Code, and other relevant laws.

I-21 **Evaluation Criteria**

Proposals will be evaluated on a “Best Value” basis, considering relevance of Respondent’s firm and team experience on contracts of a similar nature, understanding of the District’s needs and project approach, references and rate structure.

Section II Organization Description

II-1 Background

The District's facilities include Palmerton High School, Palmerton Junior High School, Towamensing Elementary School, S.S. Palmer Elementary School, and Parkside Education Center. See the list of facilities attached to this RFP as Appendix 'B'.

The District's facilities are generally aging.

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Section III Scope of Services

III-1 Project Description/Scope of Work

The selected Respondent will be on-call to the District for engineering consulting services, condition assessments, feasibility studies, engineering design, bid phase services and construction phase services.

Anticipated tasks to be individually assigned include, but are not limited to:

- A. Conducting condition assessments of one or more facilities, including:
 - Roof systems
 - Building exterior/envelope
 - Building foundation
 - Mechanical, Electrical & Plumbing systems
 - Fire alarm systems
 - Security alarm systems
 - Building grounds & site
- B. Assisting the District in prioritizing, developing scope summaries, and recommending budgets for capital plan projects.
- C. Provide necessary services as requested by the school district for any renovation or new construction project.
- D. Assist the school district in developing a 5-10 year plan for facilities.

III-2 Form of Proposal

Respondent's proposal shall provide the information in the following sequence and format:

- A. Include a cover page listing this RFP number, Company Name, Address, Primary Point of Contact name, telephone number, and email address.
- B. Provide a brief history of Respondent's business, including date founded, in-house engineering disciplines offered, licensed staff by discipline, number of employees, and office location(s).
- C. Provide a list of similar EOR contracts performed in the last five years and describe Respondent's services performed and specific projects undertaken.
- D. Describe the engineering services provided in-house. For each discipline offered, list the number of licensed professional staff.
- E. Describe the engineering services provided by sub-consultants. List specific sub-consultants that would be employed to assist in services to the District and the number of continuous years your firm has worked with each consultant.
- F. List any non-engineering services also provided in house that would be of use to the District.

- G. List five references for public school open-end/EOR services provided within the past five years (name, title, district, telephone & email).
- H. Provide Resumes of the key personnel who will be involved in providing EOR services (maximum of ten).
- I. Based on Respondent's experience with EOR contracts, describe the process Respondent recommends for project scope development, project assignment, reporting and fee structure.
- J. Describe Respondent's experience scoping and managing multi-prime public bid contracts.
- K. Select three of the above-listed tasks (III-1, 'A' through 'E') and summarize Respondent's proposed approach. Respondents shall limit their approach narrative to one page per task for a total of three pages.
- L. Include Respondent's rate schedule.

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**Appendix 'A' – Standard Contract
(attached)**

Appendix 'B' – Facilities List

<u>Name</u>	<u>Address</u>	<u>Year Built</u>	<u>Square Footage</u>	<u>Acreage</u>
Parkside Education Center	680 Fourth Street, Palmerton, PA	1917	31,464	0.69
Towamensing Elementary School	7920 Interchange Road, Lehighton, PA	1954	32,505	12.76
Steven Palmer Elementary School	298 Lafayette Avenue, Palmerton, PA	1924	71,508	1.02
Palmerton Junior High School	3529 Fireline Road, Palmerton, PA	1987	42,502	53.6
Palmerton Area High School	3525 Fireline Road, Palmerton, PA	1965	108,809	See note

Note: Junior and Senior High School are connected and share the same complex

STANDARD CONTRACT FOR SERVICES AND/OR PRODUCTS

This Standard Contract (Contract) sets forth your and our respective responsibilities and obligations with regard to the services and/or products to be provided by you to us. When we use “You” and “Your” in this Contract, we mean You, the Contractor that is identified below. When we use “We,” “Us,” “Palmerton Area School District” and “Our,” we mean the Palmerton Area School District whose address is 680 Fourth Street, Palmerton, PA 18071.

Contractor (Full Legal Name):	Term of Contract:
d/b/a Name of Contractor:	Services and/or Products to be provided by Contractor and dates for services and/or products to be provided:
Contractor’s Physical Address:	Contract Price for Services and/or Products:
Contractor’s Mailing Address:	Special Terms:
Contractor’s Tax Identification Number:	

TERMS AND CONDITIONS OF CONTRACT

1. **Independent Contractor.** The parties hereto agree that the Contractor and any agents, subcontractors and employees of the Contractor in the performance of this Contract shall act in an independent contractor capacity and not as officers, employees or agents of The Palmerton Area School District. The Contractor’s employees shall at all times be and remain the sole employees of the Contractor, and the Contractor shall be solely responsible for payment of all employees’ wages, benefits and other compensation. The Contractor, without any cost or expense to Palmerton Area School District, shall faithfully comply with all applicable laws or regulations involving workers’ compensation and unemployment insurance, social security and withholding of income tax from wages, and shall indemnify and hold Us harmless from any expenses or claims of whatsoever nature which may arise from an alleged violation of such applicable laws or regulations. You have total control over the means, manner, and method of the performance of this Contract. We are only interested in the results of Your performance and obtaining the Services or Products described in this Contract.

2. **Compliance With the Law.** You shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.
3. **Price.** The Contractor shall be required to perform the specified Services or supply the specified Products at the price(s) stated in the Contract. You shall not be allowed or paid travel or per diem expenses except as specifically set forth in this Contract.
4. **Time of Performance.** All Services shall be performed or Products supplied within the time period(s) specified in the Contract. Time is of the essence with respect to Your performance under this Contract.
5. **Performance Subject to Our Satisfaction.** You shall be compensated only for work performed to the satisfaction of Palmerton Area School District.
6. **Invoices.** You shall send an itemized invoice to Our address promptly after Services are satisfactorily completed or Products supplied in accordance with the terms and conditions of this Contract. The invoice should include only amounts due under the Contract.
7. **Payment.** We shall put forth reasonable efforts to make payment by the required payment date. The required payment date is (a) the date on which payment is due under the terms of this Contract; (b) thirty (30) days after a proper invoice actually is received by Us if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until We accept any service as satisfactorily performed); or (c) the payment date specified on the invoice is later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. Payment by Us should not be construed by the Contractor as acceptance of the service performed by You. We reserve the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service or material if such post payment testing or inspection discloses a defect or a failure to meet specifications.
8. **Warranty.** The Contractor warrants that all Services performed or Products supplied by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or Products. Unless otherwise stated in the Contract, all Services and parts are warranted for a period of one (1) year following completion of performance by the Contractor and acceptance by Us. You shall correct any problem with the Service or Products and/or replace any defective part or material with a part or material of equivalent or superior quality without any additional cost to Us.
9. **Patent, Copyright, and Trademark Indemnity.** The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: (a) the design of any Service(s), Product(s) or process(es) provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law; or (b) any copyrighted matter in any report, document, or other material provided to Us under this Contract. You shall defend any suit or proceeding brought against Us on account of any alleged patent, copyright or trademark infringement in the United States of any of the Services or Products provided or used in the performance of the Contract. We may participate in or choose to conduct, in Our sole discretion, the defense of any such action. If information and assistance are furnished by Us at Your written request, it shall be at Your expense, but the responsibility for such expense shall be only that within Your written authorization. You shall indemnify and hold Us harmless from all damages, costs, and expenses, including attorney’s fees that the Contractor or We may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any Products or Services provided or used in the performance of the Contract. If any of the Products or Services provided by the Contractor in such suit or proceeding are held to constitute infringement and

use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement Products, replace them with non-infringement equal performance Products or modify them so that they are no longer infringing.

10. **Ownership Rights.** We shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to Us as part of the performance of the Contract.
11. **Hold Harmless Provision.** You shall hold Us and Our employees, directors, agents, officials and attorneys, harmless from and indemnify Us, and Our employees, directors, agents, officials and attorneys, against any and all claims, demands and actions based upon or arising out of any activities performed by You and Your employees and agents under this Contract and shall, at Our request, defend any and all actions brought against Us, or Our employees, directors, agents, officials and attorneys based upon any such claims or demands.
12. **Audit Provisions.** We have the right, at reasonable times and at a site designated by Us to audit Your books, documents and records to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to Us and/or Our authorized representative.
13. **Default.** We may, subject to the Force Majeure provisions of this Contract, and in addition to Our other rights under the Contract, declare You in default by written notice thereof to You, and terminate as provided in the Termination Provisions of this Contract the whole or any part of this Contract for any of the following reasons:
 - a. Failure to begin work within the time specified in the Contract or as otherwise specified;
 - b. Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract terms;
 - c. Unsatisfactory performance of the work;
 - d. Breach of any term or condition of this Contract;
 - e. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - f. Discontinuance of work without approval;
 - g. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - h. Insolvency or bankruptcy; or
 - i. Assignment made for the benefit of creditors.

14. **Termination Provisions.** We have the right to terminate this Contract, in whole or in part, for any of the following reasons. Termination shall be effective upon written notice to the Contractor.
- a. **Termination for Convenience:** We have the right to terminate the Contract for Our convenience if We determine termination to be in Our best interest. The Contractor shall be paid for Services or Products satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
 - b. **Termination for Cause:** We shall have the right to terminate the Contract for Contractor default. We shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that We erred in terminating the Contract for cause, then, at Our discretion, the Contract shall be deemed to have been terminated for convenience under this Contract.
 - c. **Remedies and Preservation of Rights:** In the event that We terminate this Contract in whole or in part, We may procure, upon such terms and in such manner as We determine, Services or Products similar or identical to those so terminated, and You shall be liable to Us for any reasonable excess costs for such similar or identical Services or Products included within the terminated part of the Contract. If the Contract is terminated by Us, in addition to any other rights provided in this Contract, We may require You to transfer title and delivery immediately to Us in the manner and to the extent directed by Us, such partially completed work, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by Us shall be at the Contract price. Except as provided below, payment for partially completed work including where applicable, reports and working papers, delivered to and accepted by Us shall be in an amount agreed upon by the Contractor and Us. We may withhold from amounts otherwise due the Contractor for such completed or partially completed work(s), such sum as We determine to be necessary to protect Us against loss. Our rights and remedies under this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. Our failure to exercise any rights or remedies provided in this Contract shall not be construed to be a waiver by Us of Our rights and remedies in regard to the event of default or any succeeding event of default.
15. **Force Majeure.** Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control are defined as acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes. You shall notify Us orally within five (5) days and in writing within ten (10) days of the date on which You become aware, or should have reasonably become aware, that such cause would prevent or delay Your performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Contract is prevented or delayed, and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as Palmerton Area School District may reasonably request. After receipt of such notification, We may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.
16. **Contract Controversies.** In the event of a controversy or claim arising from the Contract, You must, within six (6) months after the cause of action occurs, file a written notice of controversy or claim with Us for a determination. We shall send Our written determination to You. Our decision shall be final and

conclusive unless, within thirty (30) days after receipt of such written determination, You file suit in the Court of Common Pleas of Carbon County or in the United States District Court for the Middle District of Pennsylvania. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with Our interpretation and We shall compensate You pursuant to the terms of the Contract.

17. **Assignability and Subcontracting.** Subject to the terms and conditions of this paragraph, this Contract shall be binding upon the parties and their respective successors and assigns. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without Our prior written consent, which consent may be withheld at Our sole and absolute discretion. You may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without Our prior written consent which consent may be withheld at Our sole and absolute discretion. Notwithstanding the foregoing, You may, without Our consent, assign Your rights to payment to be received under the Contract, provided that You provide written notice of such assignment to Us together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract. For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer to stock or a publicly traded company. Any assignment consented to by Us shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged shall not be considered to be an assignment hereunder. You shall give us written notice of any such change of name.

18. **Nondiscrimination/Sexual Harassment Clause.** During the term of the Contract, the Contractor agrees as follows:

In the hiring of any employees for any activity required under this Contract, You, Your subcontractor(s) or any person acting on Your behalf, shall not by reason of gender, nationality, disability, ethnicity, race, creed, or color, or any other unlawful basis, discriminate against any individual who is qualified and available to perform the work to which the employment relates. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the performance of work or any other activity required under the Contract on account of gender, nationality, disability, ethnicity, race, creed, or color, or any other unlawful basis. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

19. **Clearances.** Contractor must provide the following clearances required under Act 34, Act 151, FBI background checks, and employment verification or background paperwork required under applicable law or by the School District.

20. **Contractor Integrity Provision.**

a. For purposes of this clause only, the words “confidential information,” “consent,” “Contractor,” “financial interest,” and “gratuity,” shall have the following definitions:

- i. Confidential information means information that is not public knowledge or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to Contract with Us.
 - ii. Consent means written permission signed by a duly authorized officer or employee of Palmerton Area School District, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, Palmerton Area School District shall be deemed to have consented by virtue of execution of this Contract.
 - iii. Contractor means the individual or entity that has entered in the Contract with Us, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
 - iv. Financial interest means: (a) ownership of more than a five percent interest in any business; or (b) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - v. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- b. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of applicable law.
 - c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
 - d. The Contractor shall not, in connection with this or any other agreement with Us, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by an officer or employee of Palmerton Area School District.
 - e. The Contractor shall not, in connection with this or any other agreement with Us, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of Palmerton Area School District.
 - f. Except with the consent of Palmerton Area School District, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
 - g. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
 - h. For violation of any of the above provisions, Palmerton Area School District may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions and claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder. These rights and remedies are cumulative,

and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those Palmerton Area School District may have under law, statute, regulation or otherwise.

21. **Applicable Law.** This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
22. **Integration.** The Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either Palmerton Area School District or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.
23. **Change Orders.** Palmerton Area School District reserves the right to issue change orders at any time during the term of the Contract or any renewals or extensions thereof: (a) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; (b) to make changes to the Services within the scope of the Contract; (c) to notify the Contractor that Palmerton Area School District is exercising any Contract renewal or extension option; or (d) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change order shall be in writing signed by Palmerton Area School District. The change order shall be effective as of the date appearing on the change order, unless the change order specifies a later effective date. Such increases, decreases, changes or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. For purposes of this Contract, "change order" is defined as a written order signed by Palmerton Area School District directing the Contractor to make changes authorized under this clause.
24. **Insurance.** You shall, at Your sole cost and expense obtain and maintain in force throughout the original term, and any extension, of this Contract the following insurances:
 - a. Comprehensive General Liability Insurance, which shall be primary to Our insurance: \$1,000,000 for each occurrence, combined single limit for bodily and property damage;
 - b. Automobile General Liability Insurance, which shall be primary to Our insurance: \$1,000,000 combined single limit for bodily injury and property damage; and
 - c. In the event that the Contractor has any employees, Workers' Compensation and Employers' Liability, which shall be primary to Our insurance: (i) the minimum workers' compensation required by law, (ii) \$100,000 for each accident; (iii) \$500,000 for disease; and (iv) \$100,000 for disease for each employee.

- d. Upon written request by Us, You shall provide to Us prior to performing any work under this Contract with either Certificates of Insurance and/or the actual insurance policies required by this Contract.

25. **Indemnification.** You shall indemnify, hold harmless and defend Us and Our directors, officers, agents, employees and attorneys, in either their official or individual capacities, from and against any and all loss, damage, liability, claims, suits, judgments, and demands whatsoever, including attorneys' fees, arising from:

- a. Any injury to, or death of, any person or persons, or damage to property, arising out of or caused or claimed to have been caused by acts or omissions of the Contractor, any subcontractor, employee or agent of the Contractor, or any other person or entity directly or indirectly employed by any of them, whether or not caused in whole or in part, by actions or omissions of Palmerton Area School District, its agents, employees or officials, or any representative of Palmerton Area School District with respect to or in connection to Services under this Contract provided, however, that if any injury to or death of any person or persons, or damage to property, arises out of any actions or omissions of Palmerton Area School District, its agents, employees or officials, or any representative of Palmerton Area School District, then the indemnity required by this Contract by You shall be proportionately reduced taking into account the relative degree of responsibility of the Contractor, its agents, employees, representative and of Palmerton Area School District and its agents, employees, and representatives.
- b. Any claims, suits, actions, losses and/or damages by any of Your agents, employees or subcontractors against Palmerton Area School District, its Board of School Directors, officers, agents, employees, and attorneys in their official or individual capacities caused or allegedly caused by any alleged or actual acts or omissions of a Palmerton Area School District employee, agent, official, Board member or attorney, unless it is determined by a court of competent jurisdiction that the acts or omissions by a Palmerton Area School District employee, agent, official, Board member or attorney was taken maliciously and in willful violation of the rights of Your agents, employees or subcontractors and with no involvement by You or Your agents, officials or employees.
- c. Any claims, suits, actions, losses and/or damages by any person, including growing out of any alleged improper conduct of any nature or type, including physical, mental or sexual abuse or harassment, invasion of bodily integrity, personal injury, violation of civil rights, and/or unlawful discrimination, by or attributable to any of Your employees, agents, officials or contractors.
- d. Your breach of any term of this Contract.

26. **Miscellaneous Provisions.**

- a. Survival of Designated Provisions Beyond Termination of Contract. Notwithstanding anything herein to the contrary, the following provisions shall survive termination of this Contract:
 - i. The indemnity, hold harmless and defense provisions of this Contract;
 - ii. The Patent, Copyright, and Trademark provisions of this Contract;
 - iii. The Ownership provisions of this Contract;
 - iv. The Contract Controversy provisions of this Contract;
 - v. The provisions pertaining to Our remedies under this Contract; and
 - vi. The Contractor integrity provisions of this Contract.

- b. Subcontractor Relations. In the event that You enter into any contractual relationship with any other person or entity to perform any Services or Products under this Contract, by appropriate and enforceable agreement, You shall require each such subcontractor, to the extent of the work or services to be performed by the subcontractor, to be bound to comply with the terms and conditions of this Contract for the protection of Palmerton Area School District. Each subcontract agreement shall preserve and protect the rights of Palmerton Area School District with respect to the work and services of the subcontractor. You shall identify to Us any subcontractor You utilize to provide Services under this Contract and shall provide to Us before the subcontractor is permitted to perform Services under this Contract a copy of the contract between You and the subcontractor.
- c. No waiver by Us of any default shall constitute a waiver of any subsequent event, and that We retain a right of election of remedies at all times.
- d. All persons signing this Contract on behalf of the Contractor hereby personally covenant and warrant to Us that they are authorized to enter into this Contract by the governing body of the Contractor, if any, by all necessary resolutions or actions.
- e. Context. Reference in this Contract to the singular shall be meant to include reference to the plural and vice versa. Reference in this Contract to the masculine gender shall be meant to include the female and neuter and vice versa.
- f. Headings. The headings of any section or paragraph hereof are for reference purposes only and shall not in any way affect the meaning or interpretation thereof.
- g. Severability. All agreements and covenants herein contained are severable. In the event that any provision of this Contract should be held to be unenforceable, the validity and enforceability of the remaining provisions hereof shall not be affected thereby. Any court construing this Contract is expressly granted the authority to revise any invalid or unenforceable provision hereof in order to render same enforceable.

PALMERTON AREA SCHOOL DISTRICT

By: _____
President

ATTEST:

By: _____
Secretary

[COMPANY NAME]

By: _____

Dated: _____

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract awarded pursuant to this bid. According to the Pennsylvania Antibid-Rigging Act, 73 P.S. §§ 1611 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with bids.
2. The member, officer or employee of the bidder who makes the final decision on prices must execute this Non-Collusion Affidavit and the amount quoted in the bid.
3. Bid rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the bidder with responsibilities for the preparation, approval or submission of the bid.
4. In the case of a bid submitted by a joint venture, each party to the venture must be identified in the bid documents, and an Affidavit must be submitted separately on behalf of each party.
5. The term "complementary bid" as used in the Affidavit has the meaning commonly associated with that term in the bidding process and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or noncompetitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions will result in disqualification of the bid.

NON-COLLUSION AFFIDAVIT

Contract/Bid No. _____

State of _____ :
: s.s.
County of _____ :

I hereby certify that I am of _____ of _____
[Title] [Name of my firm]

and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I hereby certify that:

(1) The price(s) and amount of the bid have been determined independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.

(2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid has been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

(4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

(5) _____, its affiliates, subsidiaries, officers, directors and employees are
[Name of my firm]
not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I hereby certify that _____ understands and acknowledges that
[Name of my firm]
the above representations are material and important, and will be relied on by _____
[Name of public entity]

in awarding the contract(s) for which this bid is submitted. I understand, and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from Palmerton Area School District of the true facts relating to the submission of bids for this contract.

[Name and Company Position]

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, 20 _____

Notary Public

My Commission Expires: