

Agreement for Owner's Representative on Construction Project

This is an agreement ("Agreement") between Warwick School District, 301 West Orange Street, Lititz, PA 17543 (the "School District"), and Fidevia, LLC, 750 Lititz Pike, Lititz, PA 17543 ("Fidevia"), for Fidevia to serve as Owner's Representative for the School District on a construction project.

BACKGROUND

The School District intends to perform improvements to its Athletic Campus and related support facilities (the "Project"). To help guard against defects and enhance efficiencies for the Project, the School District wishes to engage an Owner's Representative to provide the services identified in this Agreement. Fidevia is a business that provides Owner's Representative services, and wishes to accept the assignment as Owner's Representative for the Project. Intending to be legally bound, the parties agree to the following terms and conditions.

TERMS AND CONDITIONS

1. The School District agrees to engage Fidevia and to pay it as follows for providing the following services as Owner's Representative for the Project:
 - a. For services listed on Attachments A (Scope of Services During Pre-Construction) and Attachment B (Scope of Services During Bidding) to be provided by Fidevia, the School District shall pay Fidevia hourly with a Not-to-Exceed fee of \$24,000.
 - b. For services listed on Attachment C (Scope of Services During Construction and Closeout) to be provided by Fidevia, the School District shall pay Fidevia hourly a monthly Not-to-Exceed fee of \$18,700.
 - c. In addition to the specific items listed at Attachments A through C, Fidevia shall also perform other assignments as directed by the School District that pertain to the Project, including assisting with litigation or other forms of dispute resolution, and shall do so for no additional fee so long as they do not place an undue additional burden on the Owner's Representative.
2. The School District shall not reimburse Fidevia for any out-of-pocket costs associated with the provision of services under this Agreement.
3. The School District and Fidevia do not intend this Agreement to modify the services to be provided to the School District by the Project Architect pursuant to a separate contract with the School District (the "Architect's Agreement"). Rather, the intention is for Fidevia, through its services as Owner's Representative, to serve a distinct function on the Project, in protecting the School District's interest of receiving a cost-effective, well-constructed project with appropriate materials and systems, and in serving as fiduciary to the School District, by acting separately and independently of the Architect, the contractors for the Project (the "Contractors") and other parties.

4. Fidevia shall not assign the duty of performing services under this Agreement to any other party.

5. This Agreement shall terminate upon the earliest of the following: (a) Final Completion of the Project; (b) such other time as may be mutually agreed upon by the School District and Fidevia; (c) four weeks after the School District provides Fidevia notice that it is not continuing with the Project; or (d) immediately upon termination by either party for cause, after the other party fails to cure a material breach of this Agreement within two weeks of written notice of such breach. In the event the Agreement is terminated prior to Final Completion of the Project, the School District shall pay Fidevia for services rendered through the effective date of such termination, but not pay any additional fee.

6. The School District shall provide Fidevia access to and copies of all pertinent Project documentation and other information necessary for Fidevia to perform its duties under this Agreement. Fidevia agrees to maintain confidentiality with regard to any non-public information provided to it pursuant to this Agreement.

7. Fidevia agrees to perform all services under this Agreement with the level of skill and care ordinarily used by an Owner's Representative under similar conditions at the same time and within Lancaster County and contiguous counties. Fidevia shall be liable to the School District for any and all costs, loss, liability or damages incurred by the School District, to the extent caused by Fidevia's failure to use such skill and care or by any breach of this Agreement by Fidevia. Moreover, in the event Fidevia is held by an arbitrator or court to be solely or chiefly responsible for costs, loss, liability or damages incurred by the School District, Fidevia shall be responsible for the School District's attorney's fees and consultant's fees arising from such proceeding.

8. Fidevia agrees that throughout the term of this Agreement, and for at least two years after termination of this Agreement, it shall maintain insurance coverage in at least the following amounts per occurrence, without deductibles, co-payments or other terms that are unusual for a professional Owner's Representative consultant: Professional liability, \$1,000,000; Comprehensive General Liability, \$1,000,000 with \$2,000,000 aggregate; Automobile, \$500,000; Worker's Compensation in compliance with state minimum requirements. Fidevia shall provide a Certificate of Insurance to the School District at the outset of this Agreement, and at other times upon request of the School District.

9. In providing Owner's Representative services pursuant to this Agreement, Fidevia will be acting as an independent contractor, not as an employee of the School District. In that regard, Fidevia and its employees will not be eligible for any employment-related benefits or be supervised by the School District, and the School District will not control the means and methods by which Fidevia and its employees provide services. Fidevia shall be solely responsible for any and all taxes due as an independent contractor, and shall indemnify and hold the School District harmless for all such taxes. Fidevia may perform services for other clients, but only if doing so does not interfere with its ability to perform all services requested hereunder by the School

District. Fidevia and the School District acknowledge that this Agreement does not create a partnership or joint venture between them.

10. Fidevia warrants that all information contained in its proposal submitted to the School District is true and accurate to the best of its understanding and belief. Any standards of performance contained in such response shall be incorporated into this Agreement to the extent they supplement or exceed standards otherwise stated herein.

11. Any unresolved disputes arising from this Agreement or the Project shall be subject to the same dispute resolution procedures provided for in the Architect's Agreement, which provides generally for (a) mediation if agreed upon by all parties, (b) binding arbitration at the option of the School District, and (c) otherwise litigation in the Lancaster County Court of Common Pleas, with the parties waiving the right to a trial by jury.

12. This Agreement may be modified by mutual written agreement at any time.

Both parties have executed this agreement below by duly-authorized representatives.

Warwick School District
President, Board of School Directors

Date

Fidevia, LLC

Date

Attachment A

Scope of Services During Pre-Construction

1. Evaluate Architect's Cost Estimates and Provide Written Comments/Recommendations

The Owner's Representative shall evaluate Project cost estimates prepared by the Architect, provide written comments to the School District and the Architect on whether it believes such estimates are reasonable, and provide written recommendations for any estimates it considers not to be reasonable.

2. Develop a Project Delivery Strategy

The Owner's Representative, in consultation with the School District and the Architect, shall analyze Project requirements and develop a pre-construction and construction strategy that addresses requirements for function, cost, quality, time, and logistics.

3. Evaluate and Provide Recommendation on Architect's Proposed Project Master Schedule

The Owner's Representative shall evaluate the Project Master Schedule submitted to the School District for approval by the Architect (including an evaluation of durations and milestones during all phases of the Project), and provide the School District a written recommendation on whether such schedule should be modified.

4. Monitor the Project Master Schedule

The Owner's Representative shall monitor and report on Project progress during pre-construction, recommend any appropriate updates to the Project Master Schedule, notify the Owner and the Architect of any delays or problems, and recommend any corrective action necessary to recover and meet the approved schedule.

5. Perform Value Engineering Studies

The Owner's Representative shall perform value engineering studies of design (including drawings) proposed by the Architect (a) upon completion of schematic design to evaluate systems, and (b) upon completion of design development to evaluate system details and finishes. The Owner's Representative shall generate a written report for each study, including recommendations on the selection of systems, details, and finishes, in a timely manner for evaluation by the School District and the Architect prior to the next design phase. In addition, throughout the design process, the Owner's Representative shall offer recommendations to the School District on possible cost efficiencies to be achieved through value engineering.

6. Perform Constructability Reviews

The Owner's Representative shall evaluate design documents (including drawings) as they are developed in order to avoid potential problems with constructability of the proposed design, and to minimize potential change orders relating to constructability.

7. Evaluate Project Manual

The Owner's Representative shall evaluate the Project Manual prepared by the Architect to be provided to prospective bidder, and provide recommendations to the School District and the Architect on contractor performance requirements in the Project Manual to promote quality, cost

effectiveness, appropriate allocation of work between contractors, and compliance with the Master Project Schedule. With regard to non-technical specifications, the Owner's Representative shall also confer with the School District's solicitor.

8. Provide Monthly Reports

The Owner's Representative will prepare and distribute monthly reports to the School District and the Architect on the project budget, the status of the project schedule, and on general project information.

9. Attend Design Coordination Meetings

The Owner's Representative will attend design coordination meetings on a regular basis (minimum of two per month) with the School District, the Architect, and other consultants to discuss and review all items pertinent to Project design.

10. Participate in Other Meetings and Proceedings

Upon request of the School District, the Owner's Representative shall participate in other meetings or proceedings pertaining to the Project, and unless otherwise directed by the School District shall take and distribute minutes of such meetings or proceedings.

Attachment B
Scope of Services During Bidding

1. Promote Contractor and Supplier Interest

The Owner's Representative shall identify potential contractors and suppliers appropriate for the Project and promote the Project to them, to help develop a competitive bidding environment.

2. Evaluate Bidding Advertisement

The Owner's Representative shall evaluate the bidding advertisement developed by the Architect for approval by the School District, and shall provide comments to the School District, the School District's solicitor and the Architect on such advertisement.

3. Monitor Reproduction and Distribution of Bid Documents

The Owner's Representative shall monitor the Architect's reproduction and distribution of the bid documents.

4. Attend Pre-Bid Conference and Confer on Responses to Pre-Bid RFIs

The Owner's Representative shall attend the pre-bid conference (to be organized and conducted by the Architect), and shall confer with the Architect and the School District on responses to pre-bid questions.

5. Attend Bid Opening and Confer on Evaluation and Tabulation of Bids

The Owner's Representative shall attend bid opening (to be organized and conducted by the Architect), and confer with the School District and the Architect in evaluating and tabulating bids (bid results to be documented and distributed by the Architect).

6. Confer on Evaluating Qualifications of Bidders

The Owner's Representative shall confer with the Architect and the School District in evaluating whether bidders qualify as "responsible bidders" under Pennsylvania law, and shall assist in any investigation determined to be appropriate by the School District.

7. Review Construction Contracts and Forms Submitted by Contractors

The Owner's Representative shall review construction contracts provided to Contractors who have been awarded bids (to be prepared by the Architect), shall review completed contracts and forms submitted by Contractors, and shall immediately advise the School District, the School District's solicitor and the Architect of any problems or concerns with such contracts and forms.

Attachment C
Scope of Services During Construction & Closeout
Construction Phase

1. Maintain Full-Time, On-Site Staff

The Owner's Representative will maintain a qualified, full-time, on-site field staff to provide services during Construction portion of the Project, consisting of the following personnel, which shall not change without prior approval of the School District, and shall change upon reasonable request of the School District. Such staff shall have developed a thorough knowledge of the Contract Documents for the Project prior to the commencement of construction. On average, the on-site staff of the Owner's Representative is expected to spend roughly 50% of his time with field observations described in subsection 5 below, and the balance of time on other duties described herein in this Attachment C.

2. Confirm Receipt of All Required Permits

The Owner's Representative shall confirm that all permits necessary for construction of the Project are obtained in a timely manner prior to the commencement of applicable construction, and shall inform the School District and the Architect of any failure to timely obtain such permits.

3. Attend Pre-Construction Conferences and Meetings with Contractors

The Owner's Representative shall attend one or more pre-construction meetings with Contractors, the Architect, consultants and the School District. The meetings shall include a review of project management, project schedule and project procedures. In addition, prior to construction, the Owner's Representative shall review applicable portions of the Contract Documents with each Contractor's job superintendent.

4. Assistance with Contractor Submittals

The Owner's Representative shall review, monitor and maintain a log on the Contractors' submittal to the Architect of items called for in the Contract Documents, including shop drawings, product data, samples, employee background checks, schedules, substitution requests, requests for information, schedules of value, change order requests, proposals, claims, payment applications, certificates of substantial completion and final completion, punch lists, and other information. The Owner's Representative shall also monitor and log the Architect's processing of such submittals, and report immediately to the School District and the Architect any problems or concerns with timeliness of the submittal process in accordance with the Contract Documents. The Owner's Representative shall also promptly bring to the School District's attention in writing any material differences between the Architect and the Owner's Representative regarding their respective understandings or evaluations of Contractor submittals.

5. Field Observations

Using its best efforts through on-site staff, the Owner's Representative shall observe the work of Contractors, and observe the quantity and quality of materials and equipment received and stored on site, endeavoring to protect the School District against defects, deficiencies, noncompliance with the Contract Documents or failures of performance by Contractors. The Owner's

Representative shall report promptly in writing to the School District and the Architect any such observed defects, deficiencies, noncompliance or failures of performance, as well as recommended remedial steps, sending a copy to the applicable Contractor unless directed otherwise by the School District. The Owner's Representative shall also evaluate whether approved remedial work has been properly performed. Furnishing such services will not make the Owner's Representative responsible for, or give the Owner's Representative control over, construction means, methods, techniques, sequences, procedures or results, or for safety precautions or programs. Nothing herein, though, shall excuse nonperformance by the Owner's Representative of its own duties under this Agreement or liability to the School District for any such non-performance.

6. Inspections and Testing

The Owner's Representative shall make recommendations to the School District and the Architect regarding inspections and testing by independent agencies, make recommendations on the procurement and selection of such agencies, coordinate the scheduling of inspections and testing by selected agencies, monitor the inspections and tests performed, review inspection and test reports, make recommendations to the School District and the Architect regarding inspection and test results, monitor the submittal and payment of inspection and testing agency invoices, and maintain copies of all inspection and test results. Furnishing such services will not make the Owner's Representative responsible for, or give the Owner's Representative control over, testing and inspection means, methods, techniques, sequences, procedures or results, or for safety precautions or programs. Nothing herein, though, shall excuse nonperformance by the Owner's Representative of its own duties under this Agreement or liability to the School District for any such non-performance.

7. Evaluate and Monitor Detailed Construction Schedule

The Owner's Representative will evaluate and monitor the detailed construction schedule (and updates) developed by the Contractors, checking to ensure the schedule includes viable start and finish dates for procurement and construction activities and appropriate major milestones for each segment of the work. The Owner's Representative shall observe the progress of Work on the Project, promptly advise the School District and the Architect of any deviations from the approved schedule or concerns with progress of the Project, and make recommendations for actions by Contractors to avoid or recover from any delay. The Owner's Representative shall communicate directly with Contractors regarding scheduling concerns and recommendations, unless directed otherwise by the School District. Activities of the Owner's Representative relating to Project schedules and progress shall not negate in any manner the Contractors' obligations to meet the Project schedule and deadlines, and to otherwise comply with the Contract Documents.

8. Monitor Coordination of Contractors

The Owner's Representative shall monitor the coordination of trades among Contractors on the Project, promptly advise the School District and the Architect in writing regarding any concern with such coordination, and make recommendations for actions by Contractors to avoid or recover from coordination problems. The Owner's Representative shall communicate directly with Contractors regarding coordination concerns and recommendations, unless directed otherwise by the School District. Activities of the Owner's Representative relating to Project

coordination among Contractors shall not negate in any manner the Contractors' obligations to coordinate their Work, and to otherwise comply with the Contract Documents.

9. Participate in Resolution of Suggestions, Problems, Concerns or Questions

The Owner's Representative shall confer with the School District and the Architect, and where appropriate also the Contractors, in assisting to resolve Contractor's suggestions and any problems or concerns that arise on the Project. The Owner's Representative shall also assist the School District and the Architect in addressing questions that may arise during the Project concerning the interpretation of the Contract Documents, but shall not replace the Architect as the Initial Decision-Maker (as defined in the Contract Documents) on such matters.

10. Arrange for Owner-Purchased Property

The Owner's Representative shall arrange for and oversee the delivery, storage, protections and security of any School District-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.

11. Reporting Incidents

The Owner's Representative shall immediately report to the School District and the Architect any damage occurring to materials, equipment or work performed on the Project, as well as any accidents, injuries, theft or other serious incident arising on the Project.

12. Daily Reports

The Owner's Representative shall for each work day prepare a daily report, in a form approved by the School District, summarizing on-site activities, identifying the weather conditions, the number of workers for each Contractor and any site visitors, and noting any significant decisions or issues that were addressed or any unusual events. The Owner's Representative shall email copies of the daily reports to the School District and the Architect, and shall maintain a chronological hard-copy compilation of all daily reports.

13. Maintain Project Documentation

The Owner's Representative shall maintain chronological and orderly files of all Project documentation, including contracts, drawings, specifications, submittals, samples, schedules, correspondence, meeting minutes, catalog data, directives, change orders, etc., and shall provide such documentation to the School District at the conclusion of the Project.

14. Monthly Reports

At the end of each month, or more frequently at the request of the School District, the Owner's Representative shall provide a written report to the School District (with a copy to the Architect), addressing in a form and level of detail satisfactory to the School District (including information on schedule, budget, quality, safety, logistics, and general project information), the progress and status of the Project and any material issues or concerns. The Owner's Representative shall attend and present such reports at meetings of the School District's School Board and appropriate committees thereof.

15. Evaluate and Make Recommendations on Payment Applications

The Owner's Representative shall evaluate payment applications by Contractors, and shall make recommendations to the Architect and the School District regarding approval or disapproval of such applications, including an evaluation of the percentage of Work completed by the Contractor and any factors appropriate to protect the School District against making overpayment to the Contractor.

16. Maintain Construction Cost Accounting System

The Owner's Representative will establish and maintain an accurate and up-to-date construction cost accounting system.

17. Attend Project Meetings

The Owner's Representative will attend Project Meetings at the job site at least every other week to discuss job progress, resolve problems, and make decisions.

18. Attend Construction Superintendent Meetings

The Owner's Representative will attend meetings at the job site, at least weekly, with the Contractor's construction superintendents to coordinate construction activities and discuss project progress.

19. Participate in Other Meetings or Proceedings

Upon request of the School District, the Owner's Representative shall participate in other meetings or proceedings pertaining to the Project, and unless otherwise directed by the School District shall take and distribute minutes of such meetings or proceedings.

20. Evaluate and Make Recommendations on Change Orders

The Owner's Representative, in consultation with the School District and the Architect, shall evaluate and make recommendations to the School District and the Architect on change orders, including making investigations and recommendations on the value and validity of proposed change orders, and discussing proposed change orders with Contractors.

21. Recommend Construction Changes

The Owner's Representative shall evaluate work in progress and make recommendations to the School District and the Architect for changes in the Project based on field conditions, improved quality, cost savings, or time savings.

22. Take and Maintain Photographic Records

The Owner's Representative shall take and maintain photographic and/or videotape records of construction activities and Project progress on a regular basis.

23. Monitor Contractors' Safety Programs

The Owner's Representative shall meet with Contractors at the beginning of the job to review their responsibility to maintain job safety on the worksite, review and monitor the safety program developed by each Contractor, record any safety violations, and make recommendations for improving safety conditions.

24. Worksite Security and Identification

The Owner’s Representative shall establish and monitor a system of visual identification to confirm that those entering the work site are authorized to do so. The Owner’s Representative shall also prepare and maintain a list of principal contractors and subcontractors, including names, phone and facsimile numbers, and mailing and email addresses for contact persons.

25. Monitor and Report on Inspections by Governmental Agencies

The Owner’s Representative shall accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, and promptly report to the School District and the Architect the results of such inspections.

26. Monitor Record Drawings of Contractors

The Owner’s Representative shall periodically, at least monthly, inspect the record drawings of each Contractor to ensure they are being updated to reflect any changes to the Project, and shall immediately notify the School District and the Architect in writing of any failure to maintain up-to-date drawings.

27. Assist with Any Issues Pertaining to Neighbors

Upon request of the School District, the Owner’s Representative shall assist in addressing any issues that may arise concerning the Project with neighbors of the Project.

28. Limitations of Authority

The Owner’s Representative is NOT authorized to do any of the following, and will NOT do so:

- A. Authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by the Architect and the School District.
- B. Exceed limitations of the Architect's and the School District’s authority as set forth in the Contract Documents.
- C. Undertake any of the responsibilities of Contractor, Subcontractors, or Contractor’s superintendent.
- D. Issue directions relative to, or assume control over, any aspect of the means, methods, techniques, sequences, or procedures of construction, unless such advice or directions are specifically required by the Contract Documents.
- E. issue directions regarding, or assume control over, safety precautions and programs in connection with the work of Contractors.
- F. Accept submittals from anyone other than the Contractors.
- G. Authorize the School District to occupy the Project in whole or in part.
- H. Participate in specialized field or laboratory tests, or inspections conducted by others, except as specifically authorized by the Architect and the School District.
- I. Accept defective or nonconforming work by Contractors.
- J. Stop and/or suspend work by Contractors, or reject materials, equipment and systems or other nonconforming, deficient, incomplete and unacceptable work unless authorized by the Architect and the School District, except that in **EMERGENCY** situations if the Architect and the School District cannot be immediately summoned, the Owner’s Representative shall temporarily stop and/or suspend defective work or reject defective materials, equipment and systems until the Architect and the School District can be summoned.

Scope of Services During Construction & Closeout

Closeout Phase

1. Assist with Substantial Completion and Final Completion

The Owner's Representative shall assist and confer with the School District and the Architect with regard to Substantial Completion and Final Completion procedures addressed in the Contract Documents. Among other things, the Owner's Representative shall participate in inspections of the Contractors' work, and shall assist the Architect in its duties to determine whether Substantial Completion and Final Completion have been achieved, identify any items remaining to be completed or repaired (regardless of whether the Contractor has identified such items), and identify the cost to repair or complete remaining work. The Owner's Representative shall also continue to observe the work of Contractors until Final Completion is achieved.

2. Coordinate Testing, Calibration, Start-Up and Training of Systems and Equipment

The Owner's Representative shall coordinate, monitor, and document the testing, calibration, start-up of all equipment and building systems, and training of School District personnel to operate and maintain building systems and equipment, and report to the School District and the Architect in writing regarding such activities.

3. Process Operating Manuals and Warranties

The Owner's Representative shall collect and catalog all operating and instruction manuals for equipment and building systems. The Owner's Representative shall also collect, log, review, and submit to the School District all warranty documentation.

4. Coordinate Construction Close-Out

The Owner's Representative shall, in consultation with the School District and the Architect, coordinate close-out activities including the completion of deficiencies, submittals of close-out documents, resolution of change orders, and recommendations for payment of retainage.

5. Gather and Submit Project Documentation

The Owner's Representative shall gather and submit to the School District all project documentation including files, records, drawings, submittals, samples, and other information in an organized and usable form.

6. Participate in One-Year Meeting and Coordinate Warranty Work

The Owner's Representative shall, at no additional fee, participate in a meeting with the School District and the Architect prior to the expiration of one year from the date of Substantial Completion, to be scheduled by the Architect for the purpose of reviewing the facility operations and performance, and shall coordinate warranty work by Contractors.

7. Certification

The Owner's Representative, upon completion of the project, shall be responsible for certifying that, to the best of its professional knowledge, the building conforms to the approved plans, specifications, and shop drawings.