

Nexus Solutions, LLC
6885 Sycamore Ln. N., Suite 200
Maple Grove, Minnesota 55369

DATE: April 13, 2023

PARTIES: School District of Waterville-Elysian-Morristown Nexus Solutions, LLC (Nexus)
500 East Paquin Street 6885 Sycamore Ln. N., Ste. 200
Waterville, MN 56096 Maple Grove, Minnesota 55369

PROJECT: Program Development Agreement
Comprehensive Facility Needs Assessment and Improvement Plan

Nexus Solutions, LLC proposes to develop a comprehensive facilities improvement program for the district. Specifically, Nexus will evaluate the following areas of improvement in school buildings located in Waterville & Morristown as well as site opportunities as noted:

- Assess current facilities to accommodate necessary education programs & desired public uses
- Assess safety and security needs
- Identify deferred maintenance needs, including but not limited to, mechanical, electrical, roofing, hardscapes, and building envelope repairs and replacement
- Assess indoor/outdoor facilities & athletic fields/spaces
- ADA compliance
- Analyze site for improved traffic safety
- Opportunities to improve energy, operational, and financial efficiency

The school building located in Elysian; Nexus will evaluate the following areas of improvement:

- Identify deferred maintenance needs, including but not limited to, mechanical, electrical, roofing, hardscapes, and building envelope repairs and replacement

Furthermore, Nexus will:

1. Complete a detailed facility audit and prepare cost estimates.
2. Evaluate existing capital improvement lists, define project scopes, provide an itemized list of project improvement options and develop financial solutions, including debt structuring, and options for repayment.
3. Prepare a financial solution incorporating existing capital, existing levy authorities and potentially voter approved bond referenda.
4. Consult with the District's Administration & Board on priorities and project selections.
5. For Projects the District desires to implement, but that are ineligible for funding within the District's levy authority, assist the District in preparation of a bond referendum strategy. As part of the strategy development, independent third-party public opinion polling may be conducted. The cost for the polling will be included in the cost of executing the comprehensive audit.

6. Assist the District with consensus building and development of communication plans, community outreach programs, and communications collateral, as needed.

To develop and implement the comprehensive facilities improvement program in a timely and logical manner, a two-phase approach will be used. Phase I is assessment and Phase II is implementation. This Agreement defines the obligations of both parties during Phase I. Upon completion of Phase I, the Parties understand and agree that for Phase II, the District shall issue a separate contract to Nexus for all professional services required to implement this work. These services include, but are not limited to: program management, engineering, architecture, construction management, and commissioning. To deliver these services, Nexus may self-perform the work or may utilize the services of sub-consultants.

The District retains the right to proceed with all, some or none of the recommended Phase II work, in its sole discretion. If the District does not proceed with any Phase II Work, then the District is not obligated to execute any additional contract documents with Nexus for Phase II Work. However, to ensure the benefits associated with Nexus' recommendations are realized by the District, the District agrees that it shall not proceed with Phase II Work with any company other than Nexus.

If the District proceeds with Phase II work, Nexus' compensation shall be computed as follows:

- Compensation for Architectural Services computed at 7.00% of the related Architectural Construction Cost, and not total Construction Cost.
- Plus, compensation for Engineering Services computed at 8.95% of the related Engineering Construction Cost, and not the total Construction Cost.
 - Please note – Architectural & Engineering Services are NOT additive. Services will only be billed as they are specifically used on the Project.
- Plus, compensation for Commissioning Services computed at 2.5% of the related Commissioning Construction Cost, and not total Construction Cost.
- Plus, compensation for Construction Management Services computed at 3.50% of the total Construction Cost.
- All Costs references above shall be estimated cost, not actual cost. Fee percentages as described above shall be used to calculate compensation as a stipulated sum based off estimated cost.
- Compensation for onsite project & program management, supervision and related expenses will be considered a reimbursable General Condition and part of the project's Construction Cost.
- If professional services are required that have not been defined above, or which differ from those defined above, the Parties agree to negotiate reasonable fees based on typical industry rates.

The Parties both agree to work in good faith to negotiate terms and conditions (T&C) for the professional services required to implement Phase II work. When completed, the T&C will be attached and serve as an addendum to this Agreement. The Parties both agree to work together to complete the T&C(s) by January 31, 2025. Under no circumstances shall the T&C contain language allowing the District to terminate this Agreement or subsequent Phase II contracts for convenience. Termination shall only be allowed if the party in default fails to cure after being given notice of the default and an opportunity to cure.

If Nexus completes the work as described above and the District decides not to implement all or portions of the comprehensive facilities improvement program, the District agrees to pay Nexus an amount not to exceed \$11,000 within 60 days of receiving the comprehensive report. The Parties understand that this negotiated audit fee does not represent the true cost of executing the comprehensive audit and, as such, it is a “walk away” fee should the District decide not to proceed with Phase II. Assuming the District does proceed with Phase II, the actual development costs will be rolled into the total cost of the program. The District will have no obligation to pay this amount if Nexus fails to meet the criteria above.

The District expressly waives its right to terminate this Agreement or subsequent Phase II contracts for convenience or without cause. However, this Agreement may be terminated by either Party upon not less than 14 days written notice should the other party fail to substantially perform in accordance with the terms of the Agreement through no fault of the Party initiating the termination. Furthermore, the terms and conditions attached to this document are incorporated into this proposal by reference.

This Agreement shall expire three years (36 months) after Nexus receives authorization to proceed with the Phase I work. This Agreement may be extended beyond the original three-year term upon the agreement of both Parties. To accept this proposal and authorize Nexus to proceed, please sign where indicated below. This proposal is valid for thirty (30) days.

**School District of Waterville-
Elysian-Morristown**

Signature _____

Name Ryan Jensen

Title Superintendent

Date _____

Nexus Solutions, LLC

Signature _____

Name Michael J. David

Title Nexus Principal

Date _____

TERMS AND CONDITIONS

By accepting this proposal, the District agrees to be bound by the following terms and conditions:

1. **SCOPE OF WORK.** The District agrees to provide Nexus with utility records (electricity, natural gas, propane, fuel oil, water, and sewer) as requested without charge. The District shall not back charge Nexus for any costs or expenses without Nexus' written consent.
2. **HAZARDOUS MATERIALS.** Unless specifically noted in the statement of the scope of work or services undertaken by Nexus under this agreement, Nexus' obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environment Hazards or dangerous substances, to include but not be limited to asbestos or PCBs, discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the District to change, modify, or alter the scope of work or services to be performed by Nexus shall not operate to compel Nexus to perform any work relating to Hazards without Nexus' express written consent.
3. **INDEMNITY.** To the extent permitted by law, the Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorney's fees, which may arise in connection with the execution of the work herein specified and which are caused, in whole or in part, by the negligent act or omission of the indemnifying Party.
4. **OCCUPATIONAL SAFETY AND HEALTH.** To the extent permitted by law, the Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating tin any way to the project or project site.
5. **INSURANCE.** Upon the execution of this agreement, Nexus shall provide the District with its insurance coverage amounts. Insurance coverage in excess of Nexus' standard limits will be furnished when requested and required. If the District requests insurance coverage in excess of Nexus' standard limits, the District agrees to pay and reimburse Nexus for the premiums paid for the excess coverage. No credit will be given or premium paid by Nexus for insurance afforded by others.
6. **COMPLIANCE WITH LAWS.** Nexus shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the District.
7. **DELAYS.** Nexus shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond Nexus' control, including, but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the District, Owner, or other Contractors or delays caused by suppliers or subcontracts of Nexus, etc.
8. **INVOICING & PAYMENTS.** The District agrees to pay Nexus within 30 days of receiving an invoice from Nexus or within 30 days of resolution of good faith dispute regarding any invoice payment.
9. **TAXES.** The price of this proposal does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. The District shall pay, in addition to the stated price, all taxes not legally required to be paid by Nexus or, alternatively, shall provide Nexus with acceptable tax exemption certificates. Nexus shall provide the District with any tax payment certificate upon request and after completion and acceptance of the work.
10. **ENTIRE AGREEMENT.** This proposal, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
11. **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon Nexus unless accepted by Nexus in writing.