

EVERMAN INDEPENDENT SCHOOL DISTRICT

CONTRACT FOR CONSTRUCTION SERVICES

Between the “**DISTRICT**”:

Everman Independent School **DISTRICT**
1520 Everman Parkway
Fort Worth, TX 76140

And the “**CONTRACTOR**”:

Dated: _____ , 202_____

This **CONTRACT** for Construction Services (“**CONTRACT**”) is entered into as of the date indicated above, by the **CONTRACTOR** and **DISTRICT**. Parties mutually agree and contract as follows:

1. PROJECT:

Roof replacement

1.1 CONTRACTOR agrees to provide construction services for the Project. This **CONTRACT** sets the general terms and conditions which shall apply to this **CONTRACT**.

1.2 The Project shall be substantially completed by **CONTRACTOR** on or before _____ (“Contract Time”). Final Completion shall be no later than thirty (30) days after Substantial Completion, unless agreed in writing by the parties otherwise. “Substantial Completion” is defined as the stage in the progress of the Project when the Project or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project for its intended use; all systems included in the Project or designated portion thereof have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Project have been made, approved, and posted; designated initial instruction of Owner’s personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining work on the Project shall be minor in nature so that the Owner can occupy the Project or the applicable portion of the Project for all of its intended

purposes on that date; and the completion of the Project by the Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining work on the Project shall be completed within 30 days. Contractor shall complete Owner's Substantial Completion Certificate.

1.3 NOTICE OF DELAYS. Whenever the **CONTRACTOR** encounters any difficulty that is delaying or threatens to delay timely performance (including actual or potential labor disputes) of the Work, the **CONTRACTOR** shall immediately give notice in writing to the **DISTRICT**, including all relevant information. Such notice shall not in any way constitute a basis for an extension of the delivery or performance schedule or be construed as a waiver by the **DISTRICT** of any right or remedies to which it is entitled by law or pursuant to provisions herein. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery or performance schedule because of such delay.

1.4 FORCE MAJEURE. Neither the **CONTRACTOR** nor the **DISTRICT** shall be responsible or deemed to be in default of its obligations to the other to the extent any failure to perform or delay in performing its obligations under this **CONTRACT** is caused by events or conditions beyond the reasonable control of that party, and are not due to the negligence or willful misconduct of such party (hereinafter, "Force Majeure events"). For purposes of this **CONTRACT**, Force Majeure events shall include, but not be limited to, acts of God or public enemy, war, riot or civil commotion, strikes, epidemic, fire, earthquake, tornado, hurricane, flood, explosion, or other catastrophes, or events or conditions due to governmental law, regulations, ordinances, order of a court of competent jurisdiction, executive decree or order. However, in the event of such delay(s) or nonperformance, the party so delayed shall furnish prompt written notice to the other party (including the date of inception of the Force Majeure event and the extent to which it will affect performance) and shall undertake all efforts reasonably possible to cure the delay or nonperformance and mitigate its effects or to otherwise perform. Force Majeure events do not include reasonably anticipated rain days during the term of the Project. Such anticipated rain days shall be included in the scheduled workdays such that Project deadlines stated in paragraph 1.2 can still be met. The **DISTRICT** shall not be responsible for payment for any product or service delayed or foreclosed by any Force Majeure event unless and until such delayed or foreclosed product or service is provided. The provisions of this section shall not preclude the **DISTRICT** from canceling or terminating any resulting award (or any order for any goods or services included herein), or from revising the scope of the Work, as otherwise permitted under this **CONTRACT**.

1.5 BOND REQUIREMENTS.

A. The **DISTRICT** will require the **CONTRACTOR** to furnish a 100% performance and payment bond each in the sum specified by the **CONTRACTOR'S** proposal amount for each individual project, with such corporate sureties as may be agreeable to the **DISTRICT**. **Payment bonds are**

required if the Contract Sum exceeds \$25,000 and Performance bonds are required if the Contract Sum exceeds \$100,000.

B. The surety company writing such bonds must be licensed to do business in the State of Texas, and be reasonably acceptable to the **DISTRICT**.

C. The bonds shall be obtained by the **CONTRACTOR** and provided to **DISTRICT** prior to commencing any work.

D. No extension of the completion date shall be allowed for delays in furnishing satisfactory bonds hereunder.

E. Failure to deliver the performance and payment bonds as specified shall be considered as having abandoned the **CONTRACT** and will terminate the **CONTRACT**.

F. Original bonds shall be delivered to the **DISTRICT** no later than fifteen (15) days after the signing of the **CONTRACT**.

1.6 INSURANCE REQUIREMENTS.

No Work shall commence on the Project until the **CONTRACTOR** provides proof of insurance coverage to the **DISTRICT**. The **CONTRACTOR** shall procure, maintain and provide insurance certificates, policies and endorsements further identified below and in Exhibit "A" attached to this **CONTRACT** and in at least the amounts stated in Exhibit A, to protect both the **CONTRACTOR** and **DISTRICT** from claims arising out of the performance of the **CONTRACTOR'S** services under this **CONTRACT**, and caused by any error, omission, negligent act or omission, or installation defect by the **CONTRACTOR**. The **DISTRICT** shall be named as an additional insured on all insurance certificates, policies, and endorsements associated with Work identified by this **CONTRACT** except the Workers Compensation coverage. All insurance shall be, by endorsement, primary and noncontributory with respect to the **DISTRICT**, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of **DISTRICT** on all claims arising out of the Project. The policies shall provide such waivers of subrogation as to **DISTRICT** by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged. All policies shall be primary and non-contributory.

All insurance and bonds shall remain in full force and effect, and uninterrupted during the term of this **CONTRACT**, and such insurance for Completed Operations shall remain in full force and effect two years from the date of Final Payment.

Worker's Compensation and Employer's Liability Insurance: Worker's Compensation Coverage with limits in conjunction with Employer's Liability Insurance as required by the attached Exhibit A, the Texas Labor Code, and **DISTRICT'S BOARD POLICY CV (EXHIBIT)** (attached) is required. The **CONTRACTOR** shall require sub-contractors to provide insurance for the latter's employees, unless such employees are covered by a Worker's Compensation policy furnished by the **PRIMARY CONTRACTOR**. See Exhibit A for amount of required policy limits.

Commercial Automobile Liability and Property Damage covering all owned, non-owned and hired vehicles to be used in performance of this work. See Exhibit A for amount of required policy limits.

Commercial General Liability Damage Insurance: Comprehensive general liability insurance in per occurrence, and aggregate amounts. Completed operations coverage shall be kept in effect for at least two years following Final Completion. See Exhibit A for amount of required policy limits.

Certificates of Insurance approved by the Texas Department of Insurance, policies, and endorsements shall be provided to the **DISTRICT** prior to commencement of work. This insurance shall be kept in force during the construction period until the Project is fully accepted by the **DISTRICT**. Such insurance shall be with a company that is rated "A-" V or better and that operates under certificates of authorization issued by the State of Texas. **CONTRACTOR** shall provide **DISTRICT** thirty (30) days prior written notice of the expiration of any policy. **CONTRACTOR** shall provide **DISTRICT** ten (10) days prior written notice of cancellation due to non-payment of premium of any policy.

The **DISTRICT** will be named additional insured on General Liability, Automobile Liability Certificates, and Builder's Risk policies or endorsements. Certificates, policy copies, and endorsement copies should be mailed or delivered to Josh Minor at District.

1.7 INDEMNIFICATION AND HOLD HARMLESS.

The **CONTRACTOR** shall defend, indemnify, and hold harmless the **DISTRICT**, its officers, trustees, agents, consultants, and employees as provided in paragraph 5.2 herein, and shall provide insurance coverage for such obligations in the policies required by this Contract.

1.8 BUILDER'S RISK INSURANCE.

Unless otherwise provided, 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 written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such policy shall be primary and non-contributory. 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 or until no person or entity other than the **DISTRICT** has an insurable interest in the property to be covered, whichever is later. This insurance shall include interests of the **DISTRICT**, the **CONTRACTOR**, Subcontractors and Sub-subcontractors in the Project and shall be primary and noncontributory. The policy shall be in the amount of the initial Contract Sum (or, if the Project is a Construction Manager at Risk project, the Guaranteed Maximum Price), plus the value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, false work, testing and start-up, temporary buildings, boiler and machinery, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. **DISTRICT** shall be a named insured under the policy, which shall also include the interests of **CONTRACTOR**, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and **CONTRACTOR'S** services and expenses required as a result of such insured loss. **CONTRACTOR** shall be responsible for maintaining said builder's risk insurance until the date of Final Completion. If this policy excludes Employee Theft or Dishonesty coverage, including Third Parties, **CONTRACTOR** shall obtain separate coverage sufficient to protect **DISTRICT'S** interest and in an amount agreeable to **DISTRICT**. A loss insured under the **DISTRICT'S** property insurance shall be adjusted by the **DISTRICT** as fiduciary and made payable to the **DISTRICT** as fiduciary for the insureds, as their interests may appear. The **CONTRACTOR** shall pay Subcontractors their just shares of insurance proceeds received by the **CONTRACTOR**, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

The **CONTRACTOR** waives all rights against the **DISTRICT** for damages caused by fire or other perils, except such rights as it may have to proceeds of such insurance held by the **DISTRICT** as a fiduciary. The **CONTRACTOR**, as appropriate, shall require such waivers of its Subcontractors and Sub-subcontractors by appropriate agreements, each in favor of **DISTRICT**.

1.9 If the Contract Sum is \$1,000,000.00 or more, or if the Contract Sum is less than \$1,000,000.00, and any Change Order, Construction Change Directives, or other Changes in the Work would increase the Contract Sum to \$1,000,000.00 or more, the total of all Change Orders, Construction Change Directives,

or other Changes in the Work may not increase the Contract Sum by more than 25% of the original Contract Sum. Any Change Order, Construction Change Directive, or other Change in the Work that would exceed that limit is void and of no effect. Texas Education Code §44.0411.

2. CONTRACTOR'S RESPONSIBILITIES.

2.1 The **CONTRACTOR** will provide the **DISTRICT** with skilled construction activities commensurate with their discipline as required and agreed upon for a satisfactory completion of a specific Project. The **CONTRACTOR** shall exercise its best professional care in its efforts to comply with those laws, codes, ordinances, and regulations that are in effect at the time and location of the Project, including, without limitations, prevailing wage rate laws under Texas Government Code, Chapter 2258, and Exhibit B to this **CONTRACT**.

2.2 The **CONTRACTOR** acknowledges the importance to the **DISTRICT** of the Project Schedule and agrees to put forth its best professional efforts to perform its services under this **CONTRACT** in a professional manner consistent with that Schedule.

2.3 The **CONTRACTOR** represents and warrants the following to the **DISTRICT**, as an inducement to the **DISTRICT** to enter into this **CONTRACT**:

2.3.1 that it is financially solvent, able to pay its debts, and possesses sufficient working capital to complete the agreed to Scope of Work;

2.3.2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Scope of Work, and perform its obligations hereunder and has sufficient experience and competence to do so;

2.3.3 that it is authorized to do business in the State of Texas, and properly licensed by all necessary governmental, public, and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project;

2.3.4 that the execution of the **CONTRACT** and its performance thereof are within its duly authorized powers to complete.

2.4 Execution of this **CONTRACT** by **CONTRACTOR** is a representation that the **CONTRACTOR** has visited the Job Site, and is generally familiar with the local conditions and restrictions to their performance of the Scope of Work.

2.5 If the **CONTRACTOR** finds discrepancies in the Contract Documents or conditions at the Project location that will impede its ability to perform their Work, it is to immediately notify the **DISTRICT** of any discrepancy or condition, and work to resolve it before starting the Work.

- 2.6 Prior to commencing construction activities, the **CONTRACTOR** shall locate all utilities in the Work area, and take precautions to protect and avoid disturbance of these utilities, unless specifically indicated to be a part of the Scope of Work for the Project.
- 2.7 The **CONTRACTOR** shall review any existing hazardous materials surveys or reports for the Project area, and shall notify the **DISTRICT** and their work force of any expected occurrence of hazardous materials during the course of the Work. If hazardous materials are uncovered, the **CONTRACTOR** is to stop work immediately, remove his forces from the area, and notify the **DISTRICT**.
- 2.8 The **CONTRACTOR** shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and coordination of it work with that of the **DISTRICT** and other **CONTRACTORS** on the same Project.
- 2.9 The **CONTRACTOR** shall be responsible for safety training of his work forces and maintaining a clean and safe work environment for their benefit and the benefit of others.
- 2.10 The **CONTRACTOR** shall be responsible to the **DISTRICT** for acts and omissions of the **CONTRACTOR'S** work force performing the Work on behalf of the **CONTRACTOR**.
- 2.11 The **CONTRACTOR** shall be responsible for inspections of completed Work and securing the appropriate jurisdictional approvals of that Work, if required for obtaining a Certificate of Occupancy.
- 2.12 The **CONTRACTOR** shall enforce strict discipline and good order among its work force performing the Work; and shall require that its employees comply with the **DISTRICT'S** drug-free, alcohol-free, weapon-free, harassment-free, and tobacco-free policies on school property. **THE**
CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE DISTRICT FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH THE DISTRICT'S DRUGFREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE POLICIES ON SCHOOL PROPERTY. Any member of the **CONTRACTOR'S** work force violating these policies will be removed from the project site immediately.
- 2.13 The **DISTRICT** shall obtain the national criminal history information on all "covered employees" of **CONTRACTOR**. "Covered employees" means any employee of **CONTRACTOR** who will have or has continuing duties related to **CONTRACTOR's** services and will have or has direct contract with **DISTRICT's** students. If a "Covered employee" has a disqualifying conviction under Texas Education Code Section 22.08341(d), the employee shall not be allowed to work on the Project. **CONTRACTOR** will provide all required identifying

data on its covered employees to **DISTRICT** and will certify it has done so. **DISTRICT** will not be able to disclose such criminal history information to **CONTRACTOR**, but will notify **CONTRACTOR** if an employee with such a disqualifying conviction will not be able to work on the Project. **CONTRACTOR** shall pay the costs of such criminal history checks by **DISTRICT** or reimburse **DISTRICT** for such costs paid by the **DISTRICT**.

2.14 The **CONTRACTOR** and all members of its work force will be required to be “badged” daily by the Administration of the campus where the work is being performed. Badges are to be worn were readily visible while on campus when children are present. Failure to secure a badge, and display it, will be grounds for immediate removal from the campus, without any acceptable delay in the Project Schedule or compensation.

2.15 **CONTRACTOR** shall cooperate with **DISTRICT** in the posting of any notices required by **DISTRICT** pursuant to Texas Business and Consumer Code Section 16.001, or notices of Workers’ Compensation Coverage carried by other parties on the **PROJECT**, including Architect.

3. COMPENSATION.

3.1 The Contract Sum for the Project, in accordance with **CONTRACTOR’S** proposal dated _____, 202_____, shall be as follows:

\$ _____ Base Bid

_____ ALLOWANCES:

_____ UNIT PRICES:

\$ _____ TOTAL CONTRACT SUM

LIQUIDATED DAMAGES:

3.2 Retainage of 5% of each payment shall be withheld by the **DISTRICT** until Final Completion of the Project and shall be paid as part of the Final Payment, unless there is a bona fide dispute between **DISTRICT** and **CONTRACTOR** regarding **CONTRACTOR’S** failure to comply with the Agreement or if **CONTRACTOR’S** surety does not consent to the release. At the **DISTRICT’S** sole discretion, retainage may be paid on completed and accepted portions of the Project prior to Final Completion.

3.3 Payment for Services rendered will be past due 30 days from receipt of invoice. Past due amounts may be charged interest per at rates specified in Texas Government Code Section 2251.025 on

any unpaid balances over thirty (30) days old. This will not be applied to any disputed amounts. In the event of dispute, Architect shall provide an explanation for withholding payment. **DISTRICT** may not withhold more than 110% of the disputed amount.

- 3.4** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Contract. A Change Order shall be based upon agreement among the **DISTRICT, CONTRACTOR** and Architect. A Construction Change Directive requires agreement by the **DISTRICT** and Architect, and may or may not be agreed to by the **CONTRACTOR**. The Architect alone may issue an order for a minor change in the Work.
- 3.5** Any claim for an increase in the Contract Sum or an increase in the Contract Time shall be given to **DISTRICT** in writing prior to performing any additional work that would increase the Contract Sum or prior to exceeding the agreed Contract Time. Claims for an increase in the Contract Sum or the Contract Time must be initiated within twenty-one (21) days after **CONTRACTOR** first recognizes the condition giving rise to the claim, or the claim shall be waived. Claims shall be submitted to **DISTRICT** and Architect. If **DISTRICT** and **CONTRACTOR** are unable to agree on the claims, Architect will investigate the claim and report findings and recommendations in writing to the **DISTRICT** and **CONTRACTOR** promptly. If the **DISTRICT AND CONTRACTOR** agree, the agreement will be reflected in a Change Order. If they do not agree, the parties shall follow the Dispute Resolution process in Section 6 of this Agreement.

4. GENERAL CONSIDERATIONS

- 4.1** Faxed or E-mailed copies of a fully executed **CONTRACT** shall be fully binding on both parties and effective for all purposes whether or not originally executed documents are transmitted to the **CONTRACTOR**. Faxed or E-mailed signatures will be treated the same as original signatures.
- 4.2** Unless otherwise specified, the **CONTRACT** shall be construed to be in accordance with, and its performance governed by the laws of the State of Texas. Venue for any litigation arising out of or related to the **CONTRACT** shall be in state courts in Tarrant County, Texas.
- 4.3** Neither the **DISTRICT** nor **CONTRACTOR** may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in association with this **CONTRACT** without the written consent of the other Party. Unless specifically stated to the contrary in any written consent to and assignment, no assignment will release or discharge the assignor from any duty or responsibility under this **CONTRACT**.

5.0 WARRANTIES, INDEMNIFICATION, AND LIMITED LIABILITY

5.1 CONTRACTOR shall provide at least a one (1) year warranty of replacement or repair of any defect in materials or workmanship under this **CONTRACT** and in connection with its Services.

5.1.1 CONTRACTOR shall, separately and in addition, warrant construction of the Project in a good and workmanlike manner and in accordance with the plans and specifications for the Project.

5.2 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE DISTRICT, AND ITS OFFICERS, TRUSTEES, AGENTS, CONSULTANTS, AND EMPLOYEES FROM ANY CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER PROFESSIONALS, OR OTHER DISPUTE RESOLUTION COSTS, ARISING FROM CONTRACTOR'S NEGLIGENT OR INTENTIONAL ACTS, ERRORS, OR OMISSIONS IN THEIR PERFORMANCE OR SERVICES UNDER THIS CONTRACT, EXCEPT TO THE EXTENT THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED BY ANY NEGLIGENT ACT OR BREACH OF OBLIGATION BY DISTRICT.

5.3 All materials delivered shall be free of any and all liens and shall, upon acceptance thereof, become the property of the **DISTRICT**, free and clear of any materialman's, supplier's, or other type liens.

5.4 Acceptance by the **DISTRICT** of any delivery shall not relieve the **CONTRACTOR** of any guarantee or warranty, express or implied, nor shall it be considered an acceptance of material not in accordance with the Specifications and shall not waive the **DISTRICT'S** right to request replacement of defective material.

6. DISPUTE RESOLUTION.

6.1 When **DISTRICT** has an applicable claim for construction defects, **DISTRICT** shall comply with the provisions of Texas Government Code Chapter 2272 related to provisions of notice of defects and the **CONTRACTOR'S** or Architect's opportunity to cure.

6.2 The **DISTRICT** and **CONTRACTOR** agree to negotiate in good faith any disputes between themselves for a period of 30 days from the date of notice prior to exercising their rights under section 6 of the Contract.

6.3 The **CONTRACTOR** stipulates that the **DISTRICT** is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suite and/or liability under the Constitution and laws of the State of Texas. By entering into this **CONTRACT**, the **DISTRICT** does not waive any of its

immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

6.4 The **DISTRICT** and **CONTRACTOR** shall endeavor to resolve remaining claims, disputes and other matters in question between them by Mediation. A request for Mediation shall be made in writing, and delivered to the other party. Mediation shall be conducted by a mutually acceptable person or entity. The parties shall share the Mediator's fee and any filing fees equally. The Mediation shall be held in the county where the **DISTRICT'S** main administrative office is located, unless another location is mutually agreed upon. If the parties cannot mutually agree on a mediator, the parties shall jointly request a district judge in Tarrant County for appointment of mediator.

6.5 The parties agree that any claim, dispute, or other matter in controversy between them shall not be subject to Mandatory Arbitration.

6.6 If the parties do not resolve their dispute through Mediation pursuant to this **CONTRACT**, the method of binding dispute resolution shall be through Litigation with venue as stated in Section 4.2 above.

7. TERMINATION OR SUSPENSION.

7.1 The **CONTRACTOR** may terminate the **CONTRACT** if the Work is suspended by the **DISTRICT** for a period of sixty (60) consecutive days through no act or fault of the **CONTRACTOR** or its forces, or if the **DISTRICT** fails to make timely payments of duly submitted regular invoices by the **CONTRACTOR**.

7.2 In the event of termination not the fault of the **CONTRACTOR** or **DISTRICT'S** convenience, the **CONTRACTOR** shall be compensated for services properly executed and performed prior to termination.

7.3 The **DISTRICT** may terminate the **CONTRACT** if the **CONTRACTOR** repeatedly fails to supply enough skilled workers or proper materials to the Project, fails to cover materials and labor expenses, is negligent, fails to comply with State or federal law, fails to properly perform or complete the Project, fails to timely perform the Project, is otherwise engaged in any other misconduct, or for other good cause.

7.4 Whenever the **DISTRICT**, in its discretion, deems it to be in its best interests, it may terminate this **CONTRACT** for the **DISTRICT'S** convenience. Such termination shall be effective when the **DISTRICT** delivers written notice of such termination for convenience to the **CONTRACTOR**. Upon receipt of such notice from the **DISTRICT**, the **CONTRACTOR** shall not thereafter incur, and the **DISTRICT** shall have no liability for, any costs under this **CONTRACT** that are not necessary for

actual performance of the Scope of Work after the date of that termination for convenience. In the event of a termination for convenience hereunder, the **DISTRICT** shall have no liability to the **CONTRACTOR** for lost or anticipated profit resulting there from.

7.5 The **CONTRACTOR** shall be considered in default of this **CONTRACT**, and such default shall be grounds for the **DISTRICT** to terminate any resulting award for this **CONTRACT** and/or pursue any and all relief, at law or in equity, to which it may be entitled by reason of such default if **CONTRACTOR** fails to perform any of its obligations under this **CONTRACT**, and fails to correct such non-performance within ten (10) calendar days of written notice from the **DISTRICT** to do so. Should any termination of this **CONTRACT** under this Item 7 be held to be unenforceable or otherwise improper by a court of competent jurisdiction, then such termination shall be considered a termination for convenience.

7.6 Notwithstanding the provision(s) of any paragraph(s) of the Agreement or any document made part of the agreement, the parties agree that District cannot legally indemnify the **CONTRACTOR** and that District does not agree to do so. Any provisions requiring District to indemnify the **CONTRACTOR** or others, are void and of no effect.

7.7 Notwithstanding the provision(s) of any paragraph(s) of the Agreement or any document made part of the agreement, the parties agree that the District is immune from any tort claims under the Texas Tort Claims Act and has no legal liability for claims, damages, or injuries of the **CONTRACTOR** under the Agreement. The parties agree that the provisions of the above stated paragraphs are void and without effect, and do not require the District to obtain insurance or to otherwise assume legal liability for such damages.

7.8 Pursuant to Texas Government Code, Chapter 2271, as amended, if Vendor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the Agreement with the District is \$100,000 or more, the Vendor represents and warrants to the District that the Vendor does not boycott Israel and will not boycott Israel during the term of the Agreement.

7.9 The **CONTRACTOR** verifies by its signature below that it is not a foreign terrorist organization identified on the lists prepared and maintained by the Texas Comptroller of Public Accounts. If the **CONTRACTOR** has misrepresented its inclusion in the Comptroller's list, such omission or misrepresentation voids this Agreement.

7.10 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers.

7.11 If Contractor is not a sole proprietorship, has ten (10) or more employees, and the value of Contractor's bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined by Texas Government Code Ann. Chapter 2274, and will not during the term of any contract with the Owner, unless excepted from that law.

7.12 As required by Texas Government Code Ann. Chapter 2274, if Contractor has ten (10) or more employees, is not a sole proprietorship, and if the value of Contractor's bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not boycott energy companies and will not during the term of any contract with the Owner, unless excepted by that law

7.13

7.13.1 By entering into this **CONTRACT**, pursuant to Texas Government Code 552, Subchapter J, the **CONTRACTOR** agrees to be bound by the following terms if the **CONTRACT** has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the **DISTRICT** or if the **CONTRACT** results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the **DISTRICT** in a fiscal year of the **DISTRICT**. If the **DISTRICT** receives a written request for public information related to this Contract that is in the possession or custody of the **CONTRACTOR** and not in the possession or custody of the **DISTRICT**, the **DISTRICT** shall send, not later than the third business day after the date the **DISTRICT** receives the written request, a written request to the **CONTRACTOR** that **CONTRACTOR** provide that information to the **DISTRICT**.

7.13.2 The **CONTRACTOR** must:

.1 Preserve all contracting information related to the **CONTRACT** as provided by the records retention requirements applicable to the **DISTRICT** for the duration of the **CONTRACT**;

.2 Promptly, within four business days, provide to the **DISTRICT** any requested contracting information that is in the custody or possession of the **CONTRACTOR** upon request of the **DISTRICT**; and,

.3 On completion of the **CONTRACT**, either:

.1 Provide to the **DISTRICT** at no cost all contracting information related to the

CONTRACT that is in the custody or possession of the **CONTRACTOR**; or

.2 Preserve the contracting information related to the **CONTRACT** as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this **CONTRACT** and the **CONTRACTOR** agrees that the contract can be terminated if the **CONTRACTOR** knowingly or intentionally fails to comply with the requirements of that subchapter.

7.13.3 Further, under Texas Government Code Chapter 552.372(c), the **DISTRICT** may not accept a bid for or award a contract to an entity that the **DISTRICT** has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the **DISTRICT** determines and documents that the entity has taken adequate steps to ensure future compliance.

7.13.4 If a **CONTRACTOR** fails to provide to the **DISTRICT** the requested information, Texas Government Code Chapter 552.373 requires the **DISTRICT** to notify the **CONTRACTOR** in writing of the failure and allow 10 business days to cure the violation. **DISTRICT** may terminate the **CONTRACT** if **CONTRACTOR** fails to remedy the failure, **DISTRICT** determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

7.14 This **CONTRACT** shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. Texas Government Code § 2269.054. This **CONTRACT** shall also not prohibit, require, discourage or encourage a person, or discriminate against a person bidding on this **CONTRACT** from entering into or declining to enter into, or adhering to, an agreement with a collective bargaining organization relating to this Project. Texas Government Code § 2269.0541.

7.15 The terms of this Agreement shall take precedence over any terms or provisions of the **CONTRACTOR's** proposal to the contrary.

This **CONTRACT**, including attached Exhibits, constitutes the entire agreement between the **DISTRICT** and **CONTRACTOR**, and supersedes all prior written or oral understandings. This **CONTRACT** may only be amended, supplemented, modified, or cancelled by a duly executed written instrument executed by both parties.

IN WITNESS WHEREOF, the Parties hereto have executed this **CONTRACT**.

DISTRICT:

CONTRACTOR:

EVERMAN INDEPENDENT SCHOOL
DISTRICT

By: _____

By: _____

Printed Name: Dr. Felicia Donaldson

Name: _____

Title: Superintendent

Title: _____

Date Signed: _____

Date Signed: _____

INSURANCE COVERAGES AND AMOUNTS

The following are the minimum acceptable coverages and amounts for this Project:

Workers' Compensation:

State:	Statutory Benefits
Employer's Liability:	\$1,000,000 per accident
	\$1,000,000 disease, policy limit
	\$1,000,000 disease, each employee

Commercial General Liability:

Each occurrence:	\$1,000,000 each occurrence
	\$2,000,000 aggregate

Medical Expense (per person) \$15,000 each occurrence

Products & Completed Operations: \$2,000,000 aggregate (to be maintained for a period of two years after Final Payment; **CONTRACTOR** shall continue to provide evidence of such coverage to **DISTRICT** on an annual basis during this period and **DISTRICT** shall be named by endorsement as an Additional Insured for such coverage)

Personal & Advertising Injury \$1,000,000 aggregate

Must include Completed Operations coverage for **CONTRACTOR**, its sub-contractors and **DISTRICT**.

Must Include Contractual Liability Coverage.

Must Include General Aggregate Per Project Endorsement

Contractual Liability:

Property Damage shall be included in Commercial General Liability Coverage.

Insurance sufficient to cover **CONTRACTOR'S** contractual indemnities.

Business Automobile Liability, including owned, non-owned, hired, or any other vehicles, in at least the amount of the Texas statutory minimum for school districts of \$100,000 per person, \$100,000 per occurrence, and \$100,000 property damage.

Umbrella Excess Liability	\$5,000,000.00 each occurrence
	\$5,000,000.00 aggregate
	Aggregate Per Project Endorsement

Builder's Risk : Amount of this Contract. The policy shall be, by endorsement, primary and noncontributory.

REQUIRED WORKERS' COMPENSATION COVERAGES
28 TAC 110.110(c) (7), adopted to implement Texas Labor Code 406.096

The District shall use the following language for bid specifications and contracts for building or construction, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

A certified or notarized certification of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project is required for the duration of the project.

Duration of the project includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project, such as food/beverage CONTRACTORS, office supply deliveries, and delivery of portable toilets.

The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all employees of the contractor providing services on the project for the duration

of the project. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

The contractor shall obtain from each person providing services on a project, and provide to the governmental entity: 1. A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. No later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

The contractor shall post on each project site a notice, in the text, form, and manner prescribed by the TDI, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The contractor shall contractually require each person with whom it contracts to provide services on a project, to: 3. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the project for the duration of the project; 4. Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;

5. Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

6. Obtain from each other person with whom it contracts, and provide to the contractor:

a. A certificate of coverage, prior to the other person beginning work on the project; and

b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

7. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter; 8. Notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
9. Contractually require each person with whom it contracts to perform as required by items 1–6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

28 TAC 110.110(i)

LABOR WAGE RATE SCHEDULE

CONTRACT IS NOT VALID WITHOUT INCLUSION OF THIS EXHIBIT

Prevailing Wage Rate Determination Information

*The following information is from Chapter 2258 Texas
Government Code:*

2258.021. Right to be Paid Prevailing Wage Rates.

- (a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:
 - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- (b) Subsection (a) does not apply to maintenance work.
- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty.

- (a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
- (b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
- (c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.
- (d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

- (e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

2258.051. Duty of Public Body to Hear Complaints and Withhold Payment.

A public body awarding a contract, and an agent or officer of the public body, shall:

- (1) take cognizance of complaints of all violations of this chapter committed in the execution of the contract; and
- (2) withhold money forfeited or required to be withheld under this chapter from the payments to the contractor under the contract, except that the public body may not withhold money from other than the final payment without a determination by the public body that there is good cause to believe that the contractor has violated this chapter.