

**TOMBALL INDEPENDENT SCHOOL DISTRICT**

**RFP #954-23 Issued: February 26, 2024**

**REQUEST FOR COMPETITIVE SEALED PROPOSALS FOR THE CIVIL CONSTRUCTION OF THE INNOVATION CENTER PHASE II**

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## I. INTRODUCTION

Pursuant to the provisions of the Texas Government Code § 2269, Subchapter D, it is the intent of the **TOMBALL INDEPENDENT SCHOOL DISTRICT (TISD)** (hereinafter known as Owner) to solicit proposals from qualified vendors to provide Construction services in the process as described herein.

A. PROJECT TEAM: THE SELECTED RESPONDENT WILL JOIN A PROJECT TEAM WHICH WILL INCLUDE OWNER ADMINISTRATION, PROGRAM MANAGER AND ARCHITECT/ENGINEER, ALL OF WHOM WILL BE ENGAGED IN A COOPERATIVE EFFORT TO PROVIDE THE OWNER WITH SUCCESSFUL AND COST-EFFECTIVE SOLUTIONS FOR A CIVIL CONSTRUCTION OF THE INNOVATION CENTER PHASE II.

B. PROJECT INFORMATION: THE OWNER PLANS TO DEMOLISH EXISTING INFRASTRUCTURE AND INSTALL NEW, LARGER DETENTION FACILITIES.

1. The intent is to leave all excess materials on site.

C. DEMOLISH PORTIONS OF THE REMAINING INFRASTRUCTURE AS SHOWN ON THE DRAWINGS. EXCAVATE A NEW LARGER DETENTION POND ON THE SOUTHERN END OF THE PROPERTY, FILL THE EXISTING DETENTION POND WITH THE SPOILS AND COMPACT, SPREAD THE REMAINING SPOILS AS SHOWN ON DESIGN DRAWINGS, INSTALL NEW DETENTION PUMP STATION AND CORRESPONDING PIPING AND UTILITIES.

D. SOME OF THE AFOREMENTIONED FACILITIES WILL BE LOCATED ON AN UNDEVELOPED PORTION OF THE OWNER'S PROPERTY.

E. THE PROJECT MAY INCLUDE THE FOLLOWING GENERAL SCOPE ITEMS:

1. Demolition

2. Excavation

3. Tree Clearing

4. Tree protection, site utilities, cement concrete paving

5. Forming, setting and installing concrete products

6. Structural framing

7. Metal fabrications

8.

9. Specialties

10. Pump installation

11. Plumbing systems

12. Electrical, telecommunications systems, telephone systems, lightning protection and possibly emergency power

13. Fire detection, alarm and emergency call systems

F. THE SUBSTANTIAL COMPLETION DATE IS STATED IN THE PROPOSAL FORM

G. THE OWNER'S ESTIMATED COST OF CONSTRUCTION **\$3,200,000.00.**

## II. RFP ADVERTISEMENT, AVAILABILITY, AND DELIVERY

A. PROPOSAL/CONTRACT DOCUMENTS, INCLUDING DRAWINGS, TECHNICAL SPECIFICATIONS, AND ADDENDA ARE AVAILABLE FOR DOWNLOAD FROM:

<https://www.tomballisd.net/about-tisd/departments/finance/purchasing/bids-and-proposals>

B. THIS IS A ONE STEP PROPOSAL PROCESS. ALL RESPONSES MUST BE PROVIDED IN A SEALED ENVELOPE/PACKAGE WITH RFP #954-23 CLEARLY PRINTED ON THE FACE AND DELIVERED TO:

Attn: Zachery Boles, CFO,  
Tomball ISD Ancillary Services Building,  
1110 Baker Drive, Room 102,  
Tomball TX 77375

C. OPENING AND READING OF PROPOSALS

1. Owner or designee will OPEN THE PROPOSALS PUBLICLY AND READ THEM ALOUD AT THE SAME LOCATION WHERE THE PROPOSALS ARE DROPPED OFF; STATED ABOVE.

2. Questions concerning this RFP shall be directed to the Owner's Program Manager, in writing, to the email address below.

3. Questions concerning the Contract Documents shall be addressed to the ENGINEERS, in writing, to the email address below.

4. Verbal questions and explanations are not permitted other than as described by this section, if any. All questions are due as described in RFQ section III.

D. ANSWERS TO QUESTIONS WILL BE ISSUED IN AN ADDENDUM AND WILL BE POSTED ON OWNER'S WEBSITE AS STATED ABOVE.

Questions concerning the RFP  
Owner's Program Manager Contact Person is:

MR. JOHN D. CAREY, Program Manager  
Lockwood Andrews & Newnam, Inc.  
FOR: TOMBALL INDEPENDENT School District  
Email: [jdcarey@lan-inc.com](mailto:jdcarey@lan-inc.com)

Questions concerning the Contract Documents  
Engineer's Contact Person is:

MR. CHRIS MONK  
Brookes & Sparks, Inc.,  
21020 Park Row,  
Katy, 77449,  
Office: 281-578-9595  
[chrism@brooksandsparks.com](mailto:chrism@brooksandsparks.com)

### III. PROBABLE SCHEDULE OF EVENTS

	<u>Date</u>	<u>Time</u>	<u>Event</u>
A.	2/23/2024 2/24/2024 3/1/2024	N/A N/A 12:00 P.M.	1st Advertisement Posted for this CSP. RFP Posted on TISD Website 2 <sup>nd</sup> Advertisement Posted for this CSP.
B.	3/12/2024	5:00 P.M.	References submitted in Excel File provided with RFP to: Juanita Solo (832) 374-0334 <a href="mailto:jgalaviz@lan-inc.com">jgalaviz@lan-inc.com</a>
C.	3/4/2024	10:30 A.M.	Pre-Proposal Conference and Site Visit to follow. Tomball Innovation Center 11211 FM 2920, Gate 2: "Warehouse Receiving" Tomball, TX 77375 "Warehouse Receiving" is the gate nearest South Persimmon St. See Exhibit W
D.	3/13/2024	12:00 P.M.	Deadline for questions
E.	3/18/2024	12:00 P.M.	Final Addendum Posted
F.	3/21/2024	10:30 A.M.	Attn: Mr. Zachery Boles, CFO Tomball ISD Ancillary Services Building, 1110 Baker Drive, Room 102, Tomball, Texas 77375
G.	3/21/2024	11:40 A.M.	Public Opening of Bids 1110 Baker Drive Tomball, Texas 77375
H.	3/21/2024	N/A	Final Evaluations Complete – Recommendation to the BOT is written.
I.	4/9/2024	5:30 P.M.	Regular BOT meeting – Presented for Approval
J.	4/10/2024	12:00 P.M.	Final Contract Agreement and General Conditions sent to Successful Bidder for Execution.
K.	<b>4/12/2024</b>	12:00 P.M.	<b>Anticipated Notice to Proceed.</b> P.O. to be issued upon receipt of bonds and insurance.
L.	<b>9/6/2024</b>	11:59 P.M.	<b>Substantial Completion Deadline</b>

- Pre-Proposal Conference. The Pre-Proposal meeting agenda will include review of topics that may affect proper preparation and submittal of proposals. Attendance at the pre-proposal meeting is not mandatory, but all proposers are highly encouraged to attend.
  - Location of Pre-Proposal Conference is as stated in the matrix above.

- Proposals received after the time and date set for the opening of proposals as stated in the matrix above will not be accepted and will be returned unopened.
  - Any Proposal received after such time will not be considered and will be returned unopened. Unsigned Proposals and/or Proposals received via Facsimile or Email will not be considered. Part 1 will be held unopened, and the names of Respondents withheld, by the Owner until the receipt of Part 2 responses. When Part 1 and Part 2 are received, pursuant to the provisions of the Texas Government Code §2269.151, the Owner's staff will publicly open and read aloud the names of the respondents and monetary offer stated in the Proposals Part 1 and the Alternates stated in Part 2. Within Forty-five (45) days following the date of the opening, the proposals will be evaluated and ranked in relation to the selection criteria set forth herein. Award will be made utilizing the Evaluation Criteria as required by Texas Government Code §2269.154 and as stated herein. Respondents must provide all requested information; and failure to comply with any portion of the solicitation will be reflected in the evaluation process. Proposals that have been opened may not be changed for the purpose of correcting an error in the price. Other than price, a proposer may have the right to change any other error or mistake in the proposal as may be permitted by applicable law and subject to the approval of the Owner, unless such change would be in contravention of statutory or common law requirements or unless such change would give an unfair advantage to the proposer making such change.

#### **IV. SUBMISSION FORMAT & CONTENT REQUIREMENTS**

A. THE CONTENTS OF THE RESPONDENT PROPOSAL MUST BE COMPLETE IN DESCRIPTION, CONCISE IN VOLUME, AND AUSTERE IN FORM.

B. THE PROPOSAL SHOULD BE IN THE FORMAT OF A WRITTEN REPORT AND SHOULD BE PREPARED ON 8-1/2" X 11" SHEETS (SINGLE-SIDED) UNLESS NOTED BELOW AND BOUND WITH COIL OR THREE RING BINDING.

a) One (1) original containing an executed version of the following

- (1) VII.A Letter of Interest
- (2) VII.B Executive Summary
- (3) VII.C Submission Questionnaire
- (4) VII.D Respondent Project Experience
- (5) VII.F Additional Information
- (6) VII.G Optional Information
- (7) VII.H Financial Information
- (8) EXHIBIT A –PROPOSAL FORM
- (9) EXHIBIT B – BID BOND
- (10) EXHIBIT C - FELONY CONVICTION NOTIFICATION
- (11) EXHIBIT D - ACKNOWLEDGMENT FORM - NON-COLLUSION STATEMENT
- (12) EXHIBIT E – PROOF OF INSURABILITY
- (13) EXHIBIT F – PROOF OF BONDING CAPACITY

- (14) EXHIBIT G - SIGNATURE PAGE AND DECLARATION OF COMPLIANCE
- (15) EXHIBIT H - DEVIATION AND EXCEPTIONS FORM
- (16) EXHIBIT I - CERTIFICATE OF RESIDENCY
- (17) EXHIBIT J - VENDOR STATEMENT OF DEBARMENT/SUSPENSION
- (18) EXHIBIT K - REQUEST FOR TAXPAYER IDENTIFICATION NUMBER
- (19) EXHIBIT L - FORM 1295-CERTIFICATE OF INTERESTED PARTIES
- (20) EXHIBIT M - CERTIFICATION REGARDING TERRORIST ORGANIZATIONS AND BOYCOTT OF ISRAEL
- (21) EXHIBIT N - Certification Regarding Boycotting Certain Energy Companies
- (22) EXHIBIT O - Certification Prohibiting Discrimination Against Firearm and Ammunition Industries
- (23) EXHIBIT P - Certification Regarding Certain Foreign-Owned Companies in Connection with Critical Infrastructure
- (24) EXHIBIT Q - ANTITRUST CERTIFICATIONS STATEMENT (TEX. GOVERNMENT CODE § 2155.005)
- (25) EXHIBIT R - CONFLICT OF INTEREST DISCLOSURE STATEMENT

b) Four (4) copies of above.

c) One (1) flash drive containing:

- (1) PDF of items stated in section IV.B.a)
- (2) Completed Microsoft Excel File in response to part VII.D.2 and VII.D.3

d) One (1) original containing an executed version of the following:

- (1) EXHIBIT S - BID ALTERNATES AND UNIT PRICE FORM
- (2)

(3) EXHIBIT T – KEY SUBCONTRACTORS

C. IT IS NOT REQUIRED TO RE-STATE EACH QUESTION IN THE RESPONSE. HOWEVER, PROVIDE SECTION NUMBER, AND OUTLINE LEVEL DESCRIPTION OF THE RESPONSE ITEM SINCE THE EVALUATION CRITERIA WILL RELY ON CERTAIN SECTIONS OF THE RESPONSE.

D. RESPONDENTS MAY PROVIDE SUPPLEMENTAL MATERIALS FURTHER DESCRIBING THEIR CAPABILITIES AND EXPERIENCE.

E. OWNER IS A GOVERNMENTAL BODY SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT. PROPOSALS SUBMITTED TO OWNER AS A RESULT OF THIS PROCUREMENT SOLICITATION MAY BE SUBJECT TO RELEASE AS PUBLIC INFORMATION AFTER CONTRACTS ARE EXECUTED OR THE PROCUREMENT IS TERMINATED. IF A RESPONDENT BELIEVES THAT ITS PROPOSAL, OR PARTS THEREOF, MAY BE EXEMPTED FROM DISCLOSURE UNDER TEXAS LAW, THE RESPONDENT MUST SPECIFY PAGE-BY-PAGE AND LINE-BY-LINE THE PARTS OF THE PROPOSAL WHICH IT BELIEVES ARE EXEMPT. IN ADDITION, THE RESPONDENT MUST SPECIFY WHICH EXCEPTION(S) TO THE TEXAS PUBLIC INFORMATION ACT ARE APPLICABLE AND PROVIDE DETAILED REASONS TO SUBSTANTIATE THE EXCEPTION(S). VAGUE OR GENERAL CLAIMS TO CONFIDENTIALITY WILL NOT BE ACCEPTED. OWNER ASSUMES NO OBLIGATION OR RESPONSIBILITY RELATING TO THE DISCLOSURE OR NONDISCLOSURE OF INFORMATION SUBMITTED BY RESPONDENTS.

1. The Owner strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of Respondent's information.

2. Any respondent wishing to maintain confidentiality of financial information must include a written request for same with the submission of the proposal.

**V. DEFINITIONS**

A. RESPONDENT: THE PRIME GENERAL CONTRACTOR COMPANY TO JOIN THE ARCHITECT, OWNER REPRESENTATIVES AND PROGRAM MANAGER TO ENSURE OPTIMAL COST CONTROL, SCHEDULING, PHASING OF PACKAGES AND CONSTRUCTION OF OWNER FACILITIES.

B. COMPANY: THE PRIME GENERAL CONTRACTOR TO JOIN THE ARCHITECT, OWNER REPRESENTATIVES AND PROGRAM MANAGER TO ENSURE OPTIMAL COST CONTROL, SCHEDULING, PHASING OF PACKAGES AND CONSTRUCTION OF OWNER FACILITIES.

C. PROGRAM MANAGER: THE ENTITY CONTRACTED BY THE OWNER TO PROVIDE OVERALL FIDUCIARY RESPONSIBILITIES AND DIRECT OVERSIGHT OF THE CONTRACTOR AND A/E TEAM TO ENSURE PERFORMANCE OF ACTIONS CONTRIBUTING TO THE SUCCESS OF THE OWNER'S OBJECTIVE.

D. RFP: REQUEST FOR PROPOSALS

E. OWNER: **TOMBALL INDEPENDENT SCHOOL DISTRICT (TISD)**

**VI. TERM OF CONTRACT**

A contract awarded in response to this RFP will be for General Contracting Services for the **CIVIL CONSTRUCTION OF THE INNOVATION CENTER PHASE II** Project.



- A. . THE OWNER HAS DEFINED PROJECT COMPLETION DATES FOR THE ANTICIPATED WORK.

## VII. SUBMISSION REQUIREMENTS

- A. LETTER OF INTEREST
- B. EXECUTIVE SUMMARY

Each respondent must include an executive summary briefly highlighting the respondent's qualifications and shall include how the respondent is most qualified to meet the evaluation criteria.

- C. SUBMISSION QUESTIONNAIRE

Please provide the following information in the sequence and format prescribed by this questionnaire. Supplemental materials providing additional information may be provided in a separate format, but the information requested below is to be provided in this format. Failure to provide clear, transparent, non-elusive answers will be deemed non-responsive and scored accordingly.

1. Firm Information
  - a) Name of Firm
  - b) Address of Principal Office
  - c) Phone and Fax Number
  - d) Primary Individual (Point of Contact) for this RFP; name and email
2. Firm Organization
  - a) Form of Business Organization (corporation, partnership, individual, joint venture, other?)
  - b) How many years has your organization been in business in its current capacity?
  - c) How many years has your organization been in business under its present name? Under what other or former names has your organization operated?
  - d) If your organization is a corporation, answer the following: Date of incorporation, State of incorporation, President's name, Vice-President's name(s), Secretary's name, and Treasurer's name.
  - e) If your organization is a partnership, answer the following: Date of organization, Type of partnership (if applicable), and Name(s) of general partner(s).
  - f) If your organization is individually owned, answer the following: Date of organization, Name of owner.
  - g) If the form of your organization is other than those listed above, describe it and name the principals.

D. RESPONDENT PROJECT EXPERIENCE

1. Construction value

- a) What is the construction dollar value, year by year, of all work under contract in all locations by your company for the period of 2018-2023?
- b) What is the construction dollar value, year by year, of all work under contract in Texas by your company for the period of 2018-2023?
- c) What is the construction dollar value, year by year, of all work under contract in Harris and contiguous counties by your company for the period of 2018-2023?
- d) What percentage of your company total construction dollar value, year by year, does all work under contract in Harris and contiguous counties by your company for the period of 2018-2023 represent?
- e) What percentage of all work under contract in Harris and contiguous counties by your company for the period of 2018-2023 has been K-12 school construction?
- f) What is the full time equivalent (FTE) employee count in all Texas locations by your company for the period of 2018-2023?
- g) What is the largest single executed contract value, year by year, by your company for the period of 2018-2023?

Section	2018	2019	2020	2021	2022	2023
VII.D.1.a)						
VII.D.1.b)						
VII.D.1.c)						
VII.D.1.d)						
VII.D.1.e)						
VII.D.1.f)						
VII.D.1.g)						

2. Completed Work (through substantial completion) within the last thirty-six months: List K-12 school projects constructed by your organization in Texas. The Respondent is obligated to provide accurate contact information for contacting the persons named below during a survey process that will be used during the evaluation scoring. An oversized (11x17) table format concisely depicting all

projects is required. Respondents must use the Microsoft Excel file available with this RFP. For each project, provide:

- a) The Owner Entity
- b) Name of the Project
- c) State if the project was new construction, renovation, addition or combination
- d) Type of construction contract (A101, A133, Owner Unique, etc.)
- e) Nature of the project/function of the building (Eg. New High School with Career Tech programs, athletic complex and natatorium)
- f) Size (SF)
- g) Construction delivery method (CMAR, CSP, Hard Bid, Etc.)
- h) Original contract (or GMP) cost
- i) Final contract (or GMP) cost
- j) Number of Change Orders (if any), either cost or time, (not change proposals, contingency expenditures or similar) with brief 150 word explanation, if desired
- k) Bid date/Final GMP
- l) Contractual original completion date
- m) Actual completion date
- n) Number of claims filed by contractor with brief explanation
- o) Number of RFI's
- p) Name of major subcontractors
- q) Owner (Primary contact) contact information (If LAN was the Program Manager, do not list LAN as the Owner's Primary Contact):
  - (1) Name,
  - (2) title,
  - (3) email address,
  - (4) phone number
- r) Architect contact information:
  - (1) Company name
  - (2) Name,
  - (3) title,
  - (4) email address,
  - (5) phone number

3. Current Work: List up to five (5) projects of similar size and scope currently under construction by your organization. List the projects in order of priority, with the most relevant project listed first. The Respondent is obligated to provide accurate contact information for contacting the persons named below during a survey process that will be used during the evaluation scoring. An oversized

(11x17) table format concisely depicting all projects is required. Respondents must use the Microsoft Excel file available with this RFP. For each project, provide:

- a) The Owner Entity
- b) Name of the Project
- c) State if the project is new construction, renovation, addition or combination
- d) Type of construction contract (A101, A133, Owner Unique, etc.)
- e) Nature of the project/function of the building (Eg. New High School with Career Tech programs, athletic complex and natatorium)
- f) Size (SF)
- g) Construction delivery method (CMAR, CSP, Hard Bid, Etc.)
- h) Original contract (or GMP) cost
- i) Current contract (or GMP) cost
- j) Number of Change Orders (if any) through current period, either cost or time, (not change proposals, contingency expenditures or similar) with brief 150-word explanation, if desired
- k) Bid date/Final GMP
- l) Contractual completion date
- m) Number of claims filed by contractor with brief explanation
- n) Number of RFI's (To date)
- o) Name of major subcontractors
- p) Owner (Primary contact) contact information (If LAN was the Program Manager, do not list LAN as the Owner's Primary Contact):

- (1) Name,
- (2) title,
- (3) email address,
- (4) phone number

q) Architect contact information:

- (1) Company name
- (2) Name,
- (3) title,
- (4) email address,
- (5) phone number

4. Contracting and Subcontracting:

- a) List the List the categories of work that your organization normally performs with its own forces. Would you propose to do any work with your own forces?

b) List any subcontractors in which your organization has some ownership and list the categories of work those subcontractors normally perform.

5. Claims, Suits and Failure to Perform: (If the answer to any of the questions below is yes, please provide details). Note: Do not fail to respond to this question or furnish vague responses. Point totals available under this category of evaluation will be affected if you choose not to fully respond.

a) Has your organization ever failed to complete any work awarded?

b) Are there any judgments, claims, arbitration proceedings or suits, pending or outstanding against your organization or its officers?

c) Has your organization filed or been involved in any lawsuits or requested arbitration with regard to construction contracts within the last sixty months?

d) Within the last sixty months, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?

6. Safety

a) Provide bidder's OSHA (Occupational Safety and Health Administration) inspection logs for the last three year

b) Provide a loss analysis from the bidder's insurance carrier

c) Provide a loss history covering all lines of insurance coverage carried by the bidder

E. PERSONNEL

1. Provide an organizational chart outlining all personnel that will be assigned to the project and their responsibilities.

2. Given the scope and schedule of the project, identify the personnel proposed, specifically the Project Manager, Job Superintendent or Superintendent(s), and Field Operations personnel proposed to work on the project. Prior to contracting, the Owner may interview the Project Manager/Job Superintendent that will be assigned to the project. Please reference these personnel to projects listed in items VII.D.2 and VII.D.3 where possible.

a) Provide a resume and references for each individual stating

(1) Proposed role on this project

(2) Description of responsibilities for this proposed role (what will this person do?)

(3) Relevant past project experience list with role that makes this individual the best choice for this project (Client, cost, seasonal

construction schedule, repairs, renovations, new construction, HVAC, etc.)

(4) General background information; education, years of experience, registrations, affiliations,

(5) Years of service with your company

(6) Prior two (2) employers and years of service with each

(7) Last three (3) completed or ongoing project assignments

(8) Contact information (Name, title, email address, phone number) for Owner's representative or Architect that could address questions regarding this individual for the last three (3) completed or ongoing projects

F. ADDITIONAL INFORMATION

1. Letters of Recommendation: Furnish five (5) letters of recommendation from past or current K-12 Texas school district customers of the respondent, preferably from those projects listed in section VII.D.2 and VII.D.3.

G. OPTIONAL INFORMATION

1. Furnish any additional content not requested by other sections of this RFP that demonstrates the qualifications of your company

H. FINANCIAL INFORMATION

1. Attach an audited financial statement, including your organization's latest balance sheet and income statement showing the following items:

a) Current assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory, and prepaid expenses).

b) Non-current assets (e.g., net fixed assets, other assets).

c) Current liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes).

d) Non-current liabilities (e.g., notes payable).

e) Capital accounts and retained earnings (e.g., capital, capital stock, authorized and outstanding shares par value, earned surplus, and retained earnings).

f) Name and address of firm preparing attached financial statement and date thereof.

g) Is the attached financial statement for the identical organization named under item VII.H.1 above? If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent subsidiary).

h) Will the organization whose financial statement is attached act as guarantor of the contract for construction?

i) Provide name, address and phone number of your financial institution.

2. Bonding

a) Provide Name of bonding company and name and address of agent.

b) Provide letter from bonding company stating the currently available bonding capacity of your company (Bonding limit minus current obligations)?

**VIII. AMENDMENTS TO THE RFP**

A. CHANGES, AMENDMENTS, OR WRITTEN RESPONSES TO QUESTIONS RECEIVED REGARDING THIS RFP WILL BE POSTED ON THE PORTAL:

<https://www.tomballisd.net/about-tisd/departments/finance/purchasing/bids-and-proposals>

B. IT IS RESPONDENT'S RESPONSIBILITY TO REVIEW THIS SITE AND ASCERTAIN WHETHER ANY AMENDMENTS HAVE BEEN MADE PRIOR TO SUBMISSION. NO ORAL STATEMENT OF ANY PERSON SHALL MODIFY OR OTHERWISE CHANGE OR AFFECT THE TERMS, CONDITIONS OR SPECIFICATIONS STATED IN THE RFP, AND CHANGES TO THE RFP – IF ANY – SHALL BE MADE IN WRITING ONLY.

**IX. RESTRICTIONS ON COMMUNICATION**

A. THE RESPONDENT'S, OR ANY AGENT OR REPRESENTATIVE OF RESPONDENT SHALL NOT UNDERTAKE ANY ACTIVITIES OR ACTIONS TO PROMOTE OR ADVERTISE THEIR QUALIFICATIONS OR SUBMISSION TO ANY MEMBER OF THE OWNER'S BOARD OF TRUSTEES, THE OWNER'S ADMINISTRATION OR THEIR RESPECTIVE STAFF PERSONS, EXCEPT AS SPECIFICALLY REQUESTED IN WRITING BY TO THE NAMED POINT OF CONTACT IN SECTION II.A AT ANY TIME BETWEEN THE DATE OF RELEASE OF THE RFP AND THE DATE OF AWARD OF A CONTRACT BY THE OWNER'S BOARD OF TRUSTEES. THIS RESTRICTION EXTENDS TO "THANK YOU" LETTERS, PHONE CALLS, EMAILS AND ANY CONTACT THAT RESULTS IN THE DIRECT OR INDIRECT DISCUSSION OF THE RFP AND/OR SUBMISSION SUBMITTED BY RESPONDENT'S. VIOLATION OF THIS PROVISION BY RESPONDENT OR HIS/HER/ITS AGENT MAY LEAD TO DISQUALIFICATION OF HIS SUBMISSION FROM CONSIDERATION.

B. THE OWNER RESERVES THE RIGHT TO CONTACT ANY RESPONDENT FOR CLARIFICATION AFTER RESPONSES ARE OPENED AND/OR TO FURTHER NEGOTIATE WITH ANY RESPONDENT IF SUCH IS DEEMED DESIRABLE BY OWNER.

**X. EVALUATION**

A. THE OWNER WILL CONDUCT A COMPREHENSIVE EVALUATION OF ALL SUBMISSIONS RECEIVED IN RESPONSE TO THIS RFP. THE OWNER MAY APPOINT A SELECTION COMMITTEE TO PERFORM THE EVALUATION.

B. EACH SUBMISSION WILL BE ANALYZED TO DETERMINE OVERALL RESPONSIVENESS, QUALIFICATIONS UNDER THE RFP AND RESPONDENT'S COST PROPOSAL. RESPONDENTS WILL BE SCORED BASED UPON THESE CRITERIA LISTED IN THIS RFP. THE OWNER MAY REQUEST ADDITIONAL INFORMATION FROM RESPONDENT'S AT ANY TIME PRIOR TO FINAL APPROVAL OF A SELECTED RESPONDENT. FINAL APPROVAL OF A SELECTED RESPONDENT(S) IS SUBJECT TO THE ACTION OF THE BOARD OF TRUSTEES OF THE OWNER.

C. THE OWNER RESERVES THE RIGHT TO CONDUCT ALL RESEARCH IT DEEMS NECESSARY AS PART OF ITS EVALUATION OF RESPONDENT'S INCLUDING THEIR PREVIOUS CLIENTS.

D. THE OWNER WILL UTILIZE THE FOLLOWING CRITERIA IN THE EVALUATION OF RESPONSES:



Points Value	Category	Evaluation Method	Reference Section
30	Proposed Amount for Base Proposal and Owner-Selected Alternates	Respondent will receive an assigned share of the total available points in this category according to banded point categories shown in the "Table of Awarded Points". A formula will be used as follows to determine the award band for your proposal based on your percentage above the low bid: Percentage Above Low Bid=((Your combination of base price proposal and Owner-selected Alternates minus the minimum proposed combination of base price proposals and Owner-selected Alternates)/( minimum proposed combination of base price proposals and Owner-selected Alternates)). The result of the formula will be used to proportion the points awarded based on the "Table of Awarded Points"	XIII
25	Evaluation Survey of Company References and Project Contacts	Respondent's references and stated project contacts will be sent a request to participate in a survey of your company. The weighted average overall score for your company will be used to allocate a pro-rated share of the total available points in this category. If 4 or fewer responses are received, your company will earn fractional points for this category. You are responsible for accuracy of email address. A formula will be used as follows: ("Reference Factor" * points available in the category). "Reference Factor" is determined as follows: If 4 or fewer responses =((Your Firm Average Score - Min of all Firms) / (Max of all Firms - Min of all Firms)) * (number of responses * 20%) OR If 5 or more responses = (Your Firm Average Score - Min of all Firms) / (Max of all Firms - Min of all Firms). A minimum value not less than 20% of the available points will be awarded as a floor value.	VII.D.2, VII.D.3
15	History of Company Performance	Respondent demonstrates consistent and average past and current workload to staff ratio, showing ability to adequately staff the work and company stability. Respondent shows no or little past history of claims, suits and failure to perform. Respondent shows low number of RFI Generated per project. Respondent shows ability to maintain cost with no cost increases. Positive safety record. Positive asset to liability ratio. Adequate bonding capacity. Strength of letters of reference.	VII.D.1, VII.D.2.n), VII.D.3.m), VII.D.5, VII.D.2.o), VII.D.3.n), VII.D.2.h), VII.D.2.i), VII.D.2.j), VII.D.3.h), VII.D.3.i), VII.D.6, VII.H.1, VII.H.2, VII.F.1
10	Similar Company Project Experience and Qualifications	Respondent <u>company</u> demonstrates similar company project experience by showing high proportion of <b>Harris and contiguous counties</b> region work, projects of comparable cost, complexity and timeframe to the work in the RFP. Respondent demonstrates high proportion of past experience with subcontractors named in proposal.	VII.D.1, VII.D.2, VII.D.2.p), VII.D.3.o), VII.D.3, VII.D.4, 0

15	Similar Individual Personnel Project Experience and Qualifications	Respondent <u>individual personnel</u> proposed for the work in the RFP demonstrate similar project experience by showing high proportion of Harris and contiguous counties region work, projects of comparable cost, complexity and timeframe to the work in the RFP. Organizational approach to the project is clear.	VII.E.2.a), VII.E.1
5	Financial Stability	Provide financial information as required herein.	VII.H

Table of Awarded Points:

Percentage Above Low	Percentage of Available Points Allocated
0% to 0.0125%	100.00%
0.0126% to 0.25%	99.50%
0.26% to 0.51%	98.50%
0.52% to 0.77%	97.50%
0.78% to 1.03%	96.50%
1.04% to 1.29%	95.50%
1.3% to 1.55%	94.00%
1.56% to 1.81%	92.50%
1.82% to 2.07%	91.00%
2.08% to 2.33%	89.50%
2.34% to 2.59%	88.00%
2.6% to 2.85%	86.25%
2.86% to 3.11%	84.50%
3.12% to 3.37%	82.75%
3.38% to 3.63%	81.00%
3.64% to 3.89%	79.25%
3.9% to 4.15%	77.50%
4.16% to 4.41%	75.50%
4.42% to 4.67%	73.50%
4.68% to 4.93%	71.50%
4.94% to 5.19%	69.50%
5.2% to 5.45%	67.50%
5.46% to 5.71%	65.50%
5.72% to 5.97%	63.25%
5.98% to 6.23%	61.00%
6.24% to 6.49%	58.75%
6.5% to 6.75%	56.50%
6.76% to 7.01%	54.25%
7.02% to 7.27%	52.00%
7.28% to 7.53%	49.50%
7.54% to 7.79%	47.00%
7.8% to 8.05%	44.50%
8.06% to 8.31%	42.00%
8.32% to 8.57%	39.50%
8.58% to 8.83%	37.00%
8.84% to 9.09%	34.50%
9.1% to 9.35%	32.00%
9.36% to 9.61%	29.25%
9.62% to 9.87%	26.50%
9.88% to 10.13%	23.75%
10.14% to 10.24%	21.00%
10.25% to 11%	18.25%
11.01% to 12%	15.50%
12.01% to 13%	12.75%
13.01% to 14%	9.75%
15.01% to 17%	6.75%

17.01% to 19%                      3.75%  
19.01% to 100%                    0.75%

## **XI.     AWARD OF CONTRACT AND RESERVATION OF RIGHTS**

A.     THE FORM OF CONTRACT WILL BE AIA DOCUMENT A101 - 2017, ATTACHED IN SECTION XXXIV, INCLUDING INCORPORATED REFERENCE FILES.

B.     THE CONTRACT, IF AWARDED, WILL BE AWARDED TO THE RESPONDENT WHOSE SUBMISSION IS DEEMED MOST ADVANTAGEOUS TO THE OWNER, UPON APPROVAL OF THE OWNER'S BOARD OF TRUSTEES.

C.     THE OWNER MAY ACCEPT ANY SUBMISSION IN WHOLE OR IN PART. IF SUBSEQUENT NEGOTIATIONS ARE CONDUCTED, THEY SHALL NOT CONSTITUTE A REJECTION OR ALTERNATE RFP ON THE PART OF THE OWNER; HOWEVER, FINAL SELECTION OF A RESPONDENT IS SUBJECT TO APPROVAL BY THE OWNER'S BOARD OF TRUSTEES.

D.     THE OWNER RESERVES THE RIGHT TO ACCEPT ONE OR MORE SUBMISSIONS, OR REJECT ANY OR ALL SUBMISSIONS RECEIVED IN RESPONSE TO THIS RFP, AND TO WAIVE INFORMALITIES AND IRREGULARITIES IN THE SUBMISSIONS RECEIVED. THE OWNER ALSO RESERVES THE RIGHT TO TERMINATE THIS RFP, AND REISSUE A SUBSEQUENT SOLICITATION, AND/OR REMEDY TECHNICAL ERRORS IN THE RFP PROCESS.

E.     THIS RFP DOES NOT COMMIT THE OWNER TO ENTER INTO A CONTRACT, AWARD ANY SERVICES RELATED TO THIS RFP, NOR DOES IT OBLIGATE THE OWNER TO PAY ANY COSTS INCURRED IN PREPARATION FOR SUBMITTING OF THE SUBMISSION FOR THIS RFP, OR IN ANTICIPATION OF A CONTRACT.

F.     ACCESS AND AUDIT RIGHTS: THE OWNER, OR ITS AUTHORIZED REPRESENTATIVE, SHALL BE AFFORDED UNRESTRICTED ACCESS TO AND PERMITTED TO INSPECT AND COPY ALL THE RESPONDENT'S RECORDS, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO ACCOUNTING RECORDS (HARD COPY AS WELL AS COMPUTER READABLE DATA), CORRESPONDENCE, INSTRUCTIONS, DRAWINGS, RECEIPTS, VOUCHERS, MEMORANDA AND SIMILAR DATA RELATING TO THIS CONTRACT. THE RESPONDENT SHALL PRESERVE ALL SUCH RECORDS FOR A PERIOD OF FIVE (5) YEARS, OR FOR SUCH LONGER PERIOD AS MAY BE REQUIRED BY LAW, AFTER FINAL PAYMENT UNDER THIS CONTRACT. IF THIS CONTRACT IS FUNDED FROM CONTRACT/GRANT FUNDS PROVIDED BY THE U.S. GOVERNMENT OR THE STATE OF TEXAS, THE CONTRACT, BOOKS, AND RECORDS SHALL BE AVAILABLE FOR REVIEW AND AUDIT BY THE COMPTROLLER GENERAL OF THE U.S. AND/OR THE INSPECTOR GENERAL OF THE FEDERAL SPONSORING AGENCY, OR THE STATE OF TEXAS AND ITS DULY AUTHORIZED REPRESENTATIVES.

G.     APPEAL/PROTEST PROCESS. ANY RESPONDENT WHO SUBMITTED A PROPOSAL MAY APPEAL THE OWNER'S AWARD, IF THE APPEAL IS BASED ON DEVIATIONS FROM LAWS, RULES, REGULATIONS, OR OWNER POLICIES. OWNER BOARD POLICY GF(LOCAL)

## **XII.    PROPOSAL MODIFICATIONS AND WITHDRAWAL PRIOR TO PROPOSAL OPENING**

A.     A RESPONDENT MAY MODIFY A PROPOSAL BY LETTER AT ANY TIME PRIOR TO THE SUBMISSION DEADLINE FOR RECEIPT OF PROPOSALS. MODIFICATION REQUESTS MUST BE RECEIVED PRIOR TO THE SUBMISSION DEADLINE. MODIFICATIONS MADE BEFORE

OPENING TIME MUST BE INITIALED BY RESPONDENT GUARANTEEING AUTHENTICITY. PROPOSALS MAY NOT BE AMENDED OR ALTERED AFTER THE OFFICIAL OPENING WITH THE SINGLE EXCEPTION THAT ANY PRODUCT LITERATURE AND/OR SUPPORTING DATA REQUIRED BY THE ACTUAL SPECIFICATIONS, IF ANY, WILL BE ACCEPTED AT ANY TIME PRIOR TO THE OWNER'S BOARD OF TRUSTEES CONSIDERATION OF SAME.

B. LIKEWISE, ANY RESPONDENT MAY MODIFY A PROPOSAL BY SUBMITTING A SUPPLEMENTAL PROPOSAL IN PERSON PRIOR TO THE SCHEDULED CLOSING TIME FOR RECEIPT OF PROPOSALS. SUCH SUPPLEMENTAL PROPOSAL SHOULD MENTION ONLY ADDITIONS OR SUBTRACTIONS TO THE ORIGINAL PROPOSAL SO AS TO NOT REVEAL THE FINAL PRICES OR TERMS TO THE OWNER UNTIL THE SEALED PROPOSAL IS OPEN.

C. THE RESPONDENT OR HIS DULY AUTHORIZED REPRESENTATIVE MAY WITHDRAW A PROPOSAL BY REQUEST, PROVIDED SUCH REQUEST IS RECEIVED BY OWNER AT THE PLACE DESIGNATED FOR RECEIPT OF PROPOSALS AND PRIOR TO THE TIME FIXED FOR THE OPENING OF PROPOSALS. THE PROPOSAL BOND WILL BE RETURNED WITH THE PROPOSALS IF WITHDRAWN IN ACCORDANCE WITH THE ABOVE. THE WITHDRAWAL OF A PROPOSAL DOES NOT PREJUDICE THE RIGHT OF THE RESPONDENT TO FILE A NEW PROPOSAL AT THE TIME AND PLACE STATED.

### **XIII. EXHIBIT A –PROPOSAL FORM**

Having examined the Request for Proposal prepared by the Owner, and in submitting this proposal, the undersigned agrees to the following:

1. To hold the proposal open for acceptance by the Owner for 60 days.
2. To hold alternate proposals open for acceptance by the Owner for 120 days
3. To execute Contract Documents within ten (10) days after the prescribed forms are presented for signature and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract.
4. The Owner maintains the right to reject any or all proposals, to waive informalities or minor irregularities in the proposal process and to accept the proposal which the Owner considers most advantageous. The Owner reserves the right to verify the accuracy and completeness of all responses by utilizing any information available to the Owner without regard to whether such information appears in the submission.
5. That this Proposal has been arrived at independently and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over respondents in the award of this proposal.
6. The Owner reserves the right to negotiate with any Respondent in a manner permitted by law.
7. The undersigned has reviewed the Contract and exhibits as modified by Owner and agrees to execute a final version of these contracts in accordance with the attached terms, subject to final approval by Owner.
8. By providing a response, each Applicant agrees to waive any claim it has or may have against the Owner, its Trustees, agents and employees, and any reference sources, arising out of or in connection with: the administration, evaluation, or recommendation of any response; waiver of any requirements in the Request for Proposals; acceptance or rejection of any response and award of the Contract.
9. The cost of developing a response is the sole responsibility of the Applicant. The Owner will not provide reimbursement of such cost, and will not be liable for any preparation cost for any reason whatsoever.
10. Respondent has visited the site of the proposed work and fully acquaint themselves with the existing conditions there and should fully inform themselves as to the facilities involved, the difficulties and restrictions attending the performance of the contract. The Respondent should thoroughly examine and familiarize themselves with the drawings, technical specifications and all other contract documents. The contractor by the execution of the contract shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal document or to visit the site or acquaint themselves with the conditions there existing. The Owner will be justified in rejecting any claim based on lack of inspection of the site prior to the proposal.
11. The unit price, if requested, for each of the several items in the proposal shall include its pro rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price proposal represents the total proposal. Any proposal not conforming to this requirement may be rejected as informal. Special attention is drawn to this condition, as the unit prices will be used to determine the amount of any change orders resulting from an increase or decrease in quantities.

Company Name: \_\_\_\_\_

1. <<Note to Editor: Chose one of the two methods below depending on the need date for the project and the anticipated permit date (or other delays to “initiating” activities)>>**Contract Time:** The undersigned agrees that, if the proposal is accepted, the Date of Commencement shall be April 15<sup>th</sup>, 2024 which will be established in a “Notice to Proceed” from the Owner and to obtain Substantial Completion of all work not later than September 6<sup>th</sup>, 2024 at 11:59PM CST, subject to extensions of time as described in the Contract Documents.

2. **Construction Permit:** The undersigned acknowledges that the bid or proposal has been submitted with the understanding that the time from submission of the bid, or proposal until a building permit will be released is estimated as 90 calendar days. The owner may issue a notice to proceed prior to the date when a building permit is released and the contractor shall commence all activities on the project for which a building permit is not required, such as project submittals, site mobilization, subcontractor buyout, and similar activities.

3. **Addenda:** The undersigned acknowledges receipt of:

- Addenda 1 .....dated ..... --/--/----
- Addenda 2 .....dated ..... --/--/----
- Addenda 3 .....dated ..... --/--/----
- Addenda 4 .....dated ..... --/--/----
- Addenda 5 .....dated ..... --/--/----

4. **Base Proposal:** The undersigned agrees to perform the complete Work of this Project, for the lump sum price of (The Base Proposal includes all allowances listed in the sum of \$100,000.00):

\_\_\_\_\_ Dollars

(Amount written in words governs)

\$ \_\_\_\_\_ (Amount in figures)

**Company Name:** \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City

ST

Zip

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_ Signature: \_\_\_\_\_

State whether firm is a:  Corporation  Partnership  Individual



#### **XIV. EXHIBIT B – BID BOND**

A bond in the amount of five (5) percent of the proposal issued by an acceptable surety licensed to do business in the State of Texas shall be submitted with each proposal. A certified check or bank draft payable to the Owner or negotiable U.S. Government Bonds (as par value) may be submitted in lieu of the Proposal Bond. Respondents are advised that performance and payment bonds are required for each project.

The bond or its comparable, will be returned to the Respondent as soon as practical after the opening of the proposals.

Furnish Bid Bond.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, \_\_\_\_\_ as PRINCIPAL, and \_\_\_\_\_  
\_\_\_\_\_, as SURETY are held and firmly bound unto \_\_\_\_\_  
\_\_\_\_\_ hereinafter called the "Owner", in the penal sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum well and  
truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally,  
firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying Bid, dated \_\_  
\_\_\_\_\_, for \_\_\_\_\_

NOW, THEREFOR, if the Principal shall not withdraw said Bid within the period specified therein after the opening of the  
same, or, if no period be specified, within sixty (60) days after the said opening, and shall within the period specified  
therefor, or if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature,  
enter into a written contract with the Owner in accordance with the Bid as accepted, and give bond with good and sufficient  
surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or in the event  
of the withdrawal of said Bid within the period specified, or the failure to enter into such Contract and give such bond within  
the time specified, if the Principal shall pay the Owner the difference between the amount specified in said Bid and the  
amount for which the local Public Agency may procure the required work or supplies or both, if the latter be in excess of  
the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS THEREOF, the above-bounded parties have executed this instrument under their several seals this \_\_\_\_\_  
day of \_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these  
present signed by its undersigned representative, pursuant to authority of its governing body.

(SEAL)

\_\_\_\_\_

(SEAL)

Attest:

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

Affix

Corporate

Seal

Attest:

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

Affix

Corporate

Seal

Attest:

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

Countersigned

By \_\_\_\_\_

\* Attorney-in-Fact, State of \_\_\_\_\_

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_, Secretary of the Corporation named as Principal in the within bond; that \_\_\_\_\_, who signed the said bond on behalf of the Principal was then \_\_\_\_\_ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested to, for and in behalf of said corporation by authority of this governing body.

Corporate

Seal

Title: \_\_\_\_\_

\* Power-of-attorney for person signing for surety company must be attached to bond.

**XV. EXHIBIT C - FELONY CONVICTION NOTIFICATION**

State of Texas Legislative Senate Bill No.1, Section 44.034, Notification of Criminal History, Subsection (a) states “a person or business entity that enters into a contract with a school Owner must give advance notice to the Owner if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.”

Subsection (b) states “a school Owner may terminate a contract with a person or business entity if the Owner determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The Owner must compensate the person or business entity for services performed before the termination of the contract.”

This notice is not required of a Publicly-held Corporation.

I, the undersigned agent for the company named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

Vendor’s Name \_\_\_\_\_

Authorized Company Official’s Name (Printed) \_\_\_\_\_

My company is a publicly held corporation; therefore, this reporting requirement is not applicable: Signature of Company Official

\_\_\_\_\_

b. My company is not owned nor operated by anyone who has been convicted of a felony.  
Signature of Company Official

\_\_\_\_\_

c. My company is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s)\_\_\_\_\_

Details of Conviction(s)\_\_\_\_\_

Signature of Company Official\_\_\_\_\_

**XVI. EXHIBIT D - ACKNOWLEDGMENT FORM - NON-COLLUSION STATEMENT**

The undersigned affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this submission in collusion with any other Respondent, and that the contents of this submission as to prices, terms or conditions of said submission have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this submission.

Vendor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Respondent (Signature): \_\_\_\_\_

Respondent (Print Name): \_\_\_\_\_

Position with Company: \_\_\_\_\_

Signature of Company Official \_\_\_\_\_

Authorizing Submission: \_\_\_\_\_

Company Official (Print Name): \_\_\_\_\_

Official Position: \_\_\_\_\_

## **XVII. EXHIBIT E – PROOF OF INSURABILITY**

Furnish proof of insurability from your insurance provider meeting the requirements set forth in the Contract, attached to this RFP. This can be in the form of a letter or other sample certificates attesting to the ability to comply with the insurance requirements.

## **XVIII. EXHIBIT F – PROOF OF BONDING CAPACITY**

Furnish proof of bonding capacity from your bonding agent stating the **bonding limits, current obligations and free bonding capacity** meeting the requirements set forth in the Contract Documents, attached to this RFP. This can be in the form of a letter.



**XIX. EXHIBIT G - SIGNATURE PAGE AND DECLARATION OF COMPLIANCE**

Circle below to indicate the business structure of Respondent

Individual/Sole Proprietorship

Partnership or Joint Venture

Corporation

Other Entity (State Type)

The undersigned certifies that (s) he is \_\_\_\_\_(title) of the Respondent entity named below; that (s)he is authorized to sign this Submission Form (if a Corporation then by resolution with Certified Copy of resolution attached) for and on behalf of the entity, if any, named below, and that (s)he is authorized to execute same for and on behalf of and bind said entity to the terms and conditions provided for in the Submission as required by this RFP, and has the requisite authority to execute an Agreement on behalf of Respondent, if awarded, and that the 11-digit Comptroller’s Taxpayer Number for the entity, if any, is:

11-digit Comptroller’s Taxpayer Number Employer Identification Number: \_\_\_\_\_

Respondent Organization Name\_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

(If Respondent is a Joint Venture, an authorized signature from a representative of each party is required)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By signing this Signature Page and Declaration of Compliance, I do hereby declare that I have read the Request for Proposal on which our Submission is submitted with full knowledge of the requirements, and do hereby agree to furnish all services in full accordance with the requirements outlined in the Request for Proposal.

By signing and executing this submission, I further certify on behalf of my organization and represent to the Owner that Respondent has not offered, conferred or agreed to confer any pecuniary benefit, as defined by TEXAS PENAL CODE ANN.§ 218, or any other thing of value, as consideration for the receipt of information or any special treatment or advantage relating to this submission; the Respondent also certifies and represents that Respondent has not offered, conferred or agreed to confer a pecuniary benefit or other things of value as consideration for the recipients decision, opinion, recommendation, vote or other exercise of discretion concerning this submission; the Respondent certifies and represents that Respondent has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the Owner concerning this submission on the basis of any consideration not authorized by law; the Respondent also certifies and represents that Respondent has not received any information not available to other Respondent so as to give the undersigned a preferential advantage with respect to this submission; the Respondent further certifies and represents that Respondent has not violated any state, federal or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that Respondent will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the Owner in return for the person having exercised the persons official discretion, power or duty with respect to this submission; the Respondent certifies and represents that it has not nor and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the Owner in connection with information regarding this submission, the submission of this submission, the award of this submission or the performance, delivery or sale pursuant to this submission.

**XX. EXHIBIT H - DEVIATION AND EXCEPTIONS FORM**

All respondents are expected to fully comply with all Terms and Conditions of this RFP, including all dates noted, the AIA A101-2017 Standard Form of Agreement and the AIA A201-2017 General Conditions of the Contract for Construction as amended by the Owner. Any proposed deviations or exceptions to the Terms and Conditions of this RFP, including AIA documents, MUST be noted on this sheet. In the absence of any entry on this Deviation Form, the respondent assures the Owner of their full compliance with the Terms and Conditions of this RFP and the AIA documents.

Any exceptions to the modified AIA Contract Documents should be noted along with suggested wording for each exception. Owner will consider any such exceptions in its evaluation of the Proposer’s proposal but is not obligated to accept any such exceptions or proposed modifications. If the Proposer and Owner are unable to resolve any exceptions to the mutual satisfaction of both parties, Owner reserves the right to reject the Proposer’s proposal and award the Contract to another Proposer. Each Proposer, by making its proposal, represents that the Proposer has read, understands, and agrees to Owner’s modifications to the AIA Documents. If a project is awarded to a Proposer and the Proposer requests changes to the Contract Documents, the Owner reserves the right to cancel the award and re-award the Project to an alternate Proposer. Requests to modify the terms of the Contract Documents during the pendency of this RFP will be denied.

Note that this deviation and exceptions form is NOT intended to note any deviations from the Construction Documents or Specifications and other information contained within the Project Manual. Any questions regarding those must be submitted in writing, per the terms of this RFP, and will be addressed accordingly in an Addenda.

The Owner will, at its sole discretion, determine whether the deviations listed below are acceptable. Furnish a description of the requested deviation, noting the impact that the proposed deviation will have on the cost and time of the project, if any, if accepted by the Owner. THIS DEVIATION FORM MUST BE SIGNED BY EACH RESPONDENT WHETHER THERE ARE DEVIATIONS LISTED OR NOT AND SUBMITTED WITH THIS PROPOSAL. THE PROPOSAL FURNISHED SHALL NOT BE QUALIFIED OR CONDITIONED IN ANY WAY ON ACCEPTANCE OF THE DEVIATIONS AND EXCEPTIONS LISTED BELOW.

DEVIATION: Cost (+-)      Time (+-)

Respondent Organization Name\_\_\_\_\_

Authorized Signature\_\_\_\_\_

**XXI. EXHIBIT I – CERTIFICATE OF RESIDENCY**

The State of Texas has passed a law concerning non-resident contractors. This law can be found in the Texas Government Code under Chapter 2252, Subchapter A. This law makes it necessary for the Owner to determine the residency of its bidders. In part, this law reads follows:

“Section: 2252.001

(3) ‘Non-resident bidder’ refers to a person who is not a resident.

(4) ‘Resident bidder’ refers to a person whose principal place of business in this state, including a

Contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Section 2252.002

“A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the following:

(1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located; or

(2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.”

I certify that \_\_\_\_\_

(Name of Company Bidding) is, under Section: 2252.001 (3) and (4),

\_\_\_\_\_ Resident Bidder

\_\_\_\_\_ Non-resident Bidder

My or our principal place of business under Section: 2252.001 (3) and (4), is in the city of

\_\_\_\_\_ in the state of \_\_\_\_\_

\_\_\_\_\_  
Signature of authorized Company Representative

\_\_\_\_\_  
Print Name

\_\_\_\_\_

Title

\_\_\_/\_\_\_/\_\_\_

Date

**XXII. EXHIBIT J - VENDOR STATEMENT OF DEBARMENT/SUSPENSION**

I have read the conditions and specifications provided in the Request for Proposal document attached. I affirm, to the best of my knowledge, the company I represent has not been debarred or suspended from conducting business by the federal government or the State of Texas.

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to applicable law, the contractor certifies that during the term of an award for all contracts by the Owner resulting from this procurement process, the contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Contractor shall immediately provide written notice to the Owner if at any time the contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Owner may rely upon a certification of a contractor that the contractor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the Owner knows the certification is erroneous.

Name of Company/Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

Company Official's Name: \_\_\_\_\_  
Printed

Company Official's Authorized Signature: \_\_\_\_\_

TITLE \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_ FAX NUMBER DATE \_\_\_\_\_

**XXIII. EXHIBIT K – REQUEST FOR TAXPAYER IDENTIFICATION NUMBER**

Complete and submit Internal Revenue Service for “W-9”

## XXIV. EXHIBIT L – FORM 1295-CERTIFICATE OF INTERESTED PARTIES

Complete and submit Texas Ethics Commission Form 1295 at the Texas Ethics Commission web site at <https://ethics.state.tx.us/forms/1295.pdf>.

### **Certificate of Interested Parties (Form 1295 – must be filled out electronically with the Texas Ethics Commission’s online filing application and attached to proposal)**

Owner is required to comply with House Bill 1295, which amended the Texas Government Code by adding Section 2252.908, Disclosure of Interested Parties. Section 2252.908 applies to a contract of Owner that (1) requires an action or vote by the Owner Board of Trustees before the contract may be signed; (2) has a value of at least \$1 million; or (3) is for services that would require a person to register as a lobbyist under Tex. Gov’t Code Chapter 305. Section 2252.908 prohibits Owner from entering into a contract resulting from this RFP with a business entity unless the business entity submits a Disclosure of Interested Parties (Form 1295) to Owner at the time business entity submits the signed contract. Effective January 1, 2018, the Form 1295 requirement does not apply to: (1) a contract with a publicly traded business entity or wholly owned subsidiary of the same; (2) an electric utility; or (3) a gas utility. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Texas Ethics Commission. The following **definitions** apply:

- (1) **“Business Entity”** means an entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. TEX. GOV’T CODE § 2252.908(1).
- (2) **“Interested Party”** means a person:
  - a) who has a controlling interest in a business entity with whom Owner contracts; or
  - b) who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. TEX. GOV’T CODE § 2252.908(3).
- (3) **“Controlling interest”** means:
  - a) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
  - b) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
  - c) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. *Subsection (c) does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.* TEX. ETHICS COMM. RULE 46.3(c).
- (4) **“Intermediary”** means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:
  - a) receives compensation from the business entity for the person’s participation;
  - b) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
  - c) is not an employee of the business entity. TEX. ETHICS COMM. RULE 46.3(e).

### **As a “business entity,” all vendors must:**

- (1) **complete Form 1295 electronically** with the Texas Ethics Commission using the online filing application, which can be found at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
  - **All vendors must complete Form 1295, even if no interested parties exist**
  - In Section 2, insert “**TOMBALL INDEPENDENT SCHOOL DISTRICT (TISD)**”
  - In Section 3, insert the RFP # “**954-23**” for this proposal
- (2) **print a copy of the completed form** (make sure that it has a computer-generated certification number in the “Office Use Only” box)
- (3) have an authorized agent of the business entity **sign the form**
- (4) **submit** the completed Form 1295 by **attaching the form to your proposal.**



OWNER must acknowledge the receipt of the filed Form 1295 by notifying the Texas Ethics Commission of the receipt of the filed Form 1295 no later than the 30<sup>th</sup> day after receipt by OWNER. After OWNER acknowledges the Form 1295, the Texas Ethics Commission will post the completed Form 1295 to its website with seven business days after receiving notice from OWNER.

**XXV. EXHIBIT M – CERTIFICATION REGARDING TERRORIST ORGANIZATIONS AND BOYCOTT OF ISRAEL**

Respondent hereby certifies that it is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. (Tex. Gov’t Code §§ 2252.151-.154)

If (a) Respondent is not a sole proprietorship; (b) Respondent has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2271 of the Texas Government Code, the Respondent hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Respondent, if any (the “Respondent Companies”), boycotts Israel, and the Respondent agrees that the Respondent and Respondent Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term “boycott” shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Name of Company/Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

Company Official’s Name: \_\_\_\_\_

Printed

Company Official’s Authorized Signature: \_\_\_\_\_

TITLE \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

**XXVI. EXHIBIT N – CERTIFICATION REGARDING BOYCOTTING CERTAIN ENERGY COMPANIES**

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more that is to be paid wholly or partly from public funds, the following certification shall apply; otherwise, this certification is not required. Pursuant to TEX. GOV'T CODE Ch. 2274 of SB 13 (87th session), Vendor hereby certifies and verifies that Vendor, or any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of these entities or business associations, if any, does not boycott energy companies and will not boycott energy companies during the term of the Agreement. For purposes of this Agreement, the term "company" shall mean an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, that exists to make a profit. The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by paragraph (a)." See TEX. GOV'T CODE § 809.001(1).

Name of Company/Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

Company Official's Name: \_\_\_\_\_

Printed

Company Official's Authorized Signature: \_\_\_\_\_

TITLE \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

**XXVII. EXHIBIT O – CERTIFICATION PROHIBITING DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES**

If (a) Vendor is not a sole proprietorship; (b) Vendor has at least ten (10) full-time employees; (c) this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the Agreement is not excepted under TEX. GOV'T CODE § 2274.003 of SB 19 (87th leg.); and (e) Owner has determined that Vendor is not a sole-source provider or Owner has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required. Pursuant to TEX. GOV'T CODE Ch. 2274 of SB 19 (87th session), Vendor hereby certifies and verifies that Vendor, or 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 these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association. For purposes of this Agreement, "discriminate against a firearm entity or firearm trade association" shall mean, with respect to the entity or association, to: "(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association." See TEX. GOV'T CODE § 2274.001(3) of SB 19. "Discrimination against a firearm entity or firearm trade association" does not include: "(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association." See TEX. GOV'T CODE § 2274.001(3) of SB 19.

Name of Company/Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

Company Official's Name: \_\_\_\_\_

Printed

Company Official's Authorized Signature: \_\_\_\_\_

TITLE \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

**XXVIII. EXHIBIT P – CERTIFICATION REGARDING CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE**

Owner is prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant to Vendor direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by Owner for product warranty and support purposes. Vendor certifies that neither it nor its parent company nor any affiliate of Vendor or its parent company, is (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; (2) a company or other entity, including governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (3) headquartered in China, Iran, North Korea, Russia, or a designated country. For purposes of this Agreement, “critical infrastructure” means “a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.” See TEX. GOV’T CODE § 2274.0101(2) of SB 1226 (87th leg.). Vendor verifies and certifies that Vendor will not grant direct or remote access to or control of critical infrastructure, except for product warranty and support purposes, to prohibited individuals, companies, or entities, including governmental entities, owned, controlled, or headquartered in China, Iran, North Korea, Russia, or a designated country, as determined by the Governor.

If Respondent is not a governmental body and (a) this Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner; or (b) this Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner, the following certification shall apply; otherwise, this certification is not required. As required by Tex. Gov’t Code § 552.374(b), the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): “The requirements of Subchapter J, Chapter 552, Government Code, may apply to this RFP and Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.” Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Respondent hereby certifies and agrees to (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement; (2) promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the Respondent on request of the Owner; and (3) on completion of the Agreement, either (a) provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of Respondent, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner.

Name of Company/Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

Company Official’s Name: \_\_\_\_\_

Printed

Company Official's Authorized Signature: \_\_\_\_\_

TITLE \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

**XXIX. EXHIBIT Q – ANTITRUST CERTIFICATIONS STATEMENT (TEX. GOVERNMENT CODE § 2155.005)**

I affirm under penalty of perjury of the laws of the State of Texas that:

1. I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;
2. In connection with this bid, neither I nor any representatives of the Company have violated any provision of the Texas Antitrust laws codified in Tex. Bus. & Comm. Code Chapter 15;
3. In connection with this bid, neither I nor any representative of the Company have violated any federal antitrust law; and
4. Neither I nor any representatives of the Company have directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Name of Company/Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

Company Official's Name: \_\_\_\_\_

Printed

Company Official's Authorized Signature: \_\_\_\_\_

TITLE \_\_\_\_\_

TELEPHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

**XXX. EXHIBIT R – CONFLICT OF INTEREST DISCLOSURE STATEMENT**

The Owner is required to comply with Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers. House Bill 23 significantly changed Chapter 176 as well as the required disclosures and the corresponding forms. As of September 1, 2015, any vendor who does business with the Owner or who seeks to do business with the Owner must fill out the new Conflict of Interest Questionnaire (CIQ) whether or not a conflict of interest exists. A conflict of interest exists in the following situations:

1. If the vendor has an employment or other business relationship with a local government officer of the Owner or a family member of the officer, as described by section 176.003(a)(2)(A) of the Texas Local Government Code; or
2. If the vendor has given a local government officer of the Owner, or a family member of the officer, one or more gifts with the aggregate value of \$100, excluding any gift accepted by the officer or a family member of the officer if the gift is: (a) a political contribution as defined by Title 15 of the Election Code; or (b) a gift of food accepted as a guest; or
3. If the vendor has a family relationship with a local government officer of the Owner.

**“Vendor”** means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. *Texas Local Government Code 176.001(7).*

**“Business relationship”** means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on: (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity; (B) a transaction conducted at a price and subject to terms available to the public; or (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. *Texas Local Government Code 176.001(3).*

**“Family relationship”** means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code. *Texas Local Government Code 176.001(2-a).*

**“Local government officer”** means: (A) a member of the governing body of a local governmental entity; (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or (C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Texas Local Government Code 176.001(4).*

**Owner Board of Trustees include:**

- Mr. John McStravick – President
- Mr. Justin Unser – Vice President
- Mr. Mark Lewandowski – Secretary
- Dr. Michael J. Pratt – Assistant Secretary
- Mr. Lee McLeod – Trustee
- Mrs. Tina Salem – Trustee
- Mr. Matt Schiel - Trustee

**Owner Superintendent:**

- Dr. Martha Salazar-Zamora

**Current local government officers include, but are not limited to:**

N/A



**If no conflict of interest exists, you must fill out Box 1 and type N/A on Box 3 of the CIQ form, sign and date it.**  
In the event of changed circumstances, an updated CIQ must be filed within seven (7) business days after the vendor becomes aware that a conflict of interest exists.

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:
  - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
  - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
- (2) the date the vendor becomes aware:
  - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
  - (B) that the vendor has given one or more gifts described by Subsection (a); or
  - (C) of a family relationship with a local government officer.

**XXXI. EXHIBIT S – BID ALTERNATES AND UNIT PRICE FORM**

**Alternates:** If the Owner elects to accept any or all of the Alternates, the undersigned agrees to modify the Base Proposal as stipulated. **Circle Add or Deduct** for each Alternate below.

Alternate NO. 1: Provide “\_\_\_\_\_” specified under section \_\_\_\_\_. Include electrical requirements in cost of alternate.

Add/Deduct \_\_\_\_\_ Dollars  
[Amount written in words governs]

\$ \_\_\_\_\_ (Amount in figures)

**Unit Price:** The undersigned further agrees that in case adjustments to the work or material is authorized from what is shown in the Contract the following Unit Prices will be used in adjusting the Contract Price. Work shall be in conformance with the Contract Documents.

**TOMBALL INDEPENDENT SCHOOL DISTRICT  
CONSTRUCTION OF DETENTION BASIN, STORM WATER PUMP STATION, AND SITE EARTHWORK  
TO SERVE TOMBALL ISD INNOVATION CENTER  
HARRIS COUNTY, TEXAS**

ATTACHMENT "A" - SCHEDULE OF UNIT PRICE WORK								2/19/2024	
BASE BID - GENERAL ITEMS									
ITEM				UNIT PRICE BID	UNIT PRICE		TOTAL PRICE		
NO.	DESCRIPTION	UNIT	QUAN.	(To Be Written in Words)	\$	CENTS	\$	CENTS	
1	Mobilization (Includes Bonds, Insurance, etc.) Not To Exceed 3% Of Total Cost Of Project	LS	1						
2	Clearing, Grubbing, & Site Preparation; Includes Draining & Mucking Out Pond "B"; Complete In Place	AC	30						
3	Demolition and Off Site Disposal of all Material; Includes Draining, Mucking & Off-Site Disposal of Spoils from Pond "A"; Complete In Place	LS	1						
4	Storm Water Pumping During Construction; Complete In Place	DAY	60						
5	Hydromulch Seeding of all disturbed areas; Complete In Place	AC	26						
6	Flexterra; Complete In Place	AC	4						
7	Solid Sod; Complete In Place	SF	9,500						
8	6' Black Chain Link Fence With Double Gate; Complete In Place	LF	2,770						
9	Survey Control Staking & Temporary Bench Mark; Must be performed by West Belt Surveying, Inc; No Substitutions Allowed; Complete In Place	LS	1	Seven Thousand Three Hundred Dollars and No Cents		\$7,300 <sup>00</sup>			
10	As-Built Survey; Signed & Sealed by a Registered Professional Land Surveyor; Must be performed by West Belt Surveying, Inc; No Substitutions Allowed; Complete In Place	LS	1	Twenty-Five Thousand Eight Hundred Dollars and No Cents		\$25,800 <sup>00</sup>			
11	Storm Water Pollution Prevention Plan ; Complete In Place	LS	1						
12	Traffic Control; Complete In Place	LS	1						

**TOMBALL INDEPENDENT SCHOOL DISTRICT  
CONSTRUCTION OF DETENTION BASIN, STORM WATER PUMP STATION, AND SITE EARTHWORK  
TO SERVE TOMBALL ISD INNOVATION CENTER  
HARRIS COUNTY, TEXAS**

BASE BID - GENERAL ITEMS								
ITEM				UNIT PRICE BID	UNIT PRICE		TOTAL PRICE	
NO.	DESCRIPTION	UNIT	QUAN.	(To Be Written in Words)	\$	CENTS	\$	CENTS
13	Gas Line Relocation as shown on Sheet 20; Complete In Place	LS	1					
<b>SUBTOTAL - General Items</b> Items 1 thru 13								

BASE BID - STORMWATER DETENTION BASIN ITEMS								
ITEM				UNIT PRICE BID	UNIT PRICE		TOTAL PRICE	
NO.	DESCRIPTION	UNIT	QUAN.	(To Be Written in Words)	\$	CENTS	\$	CENTS
14	Detention Basin Earthwork, Includes Excavation, Grading & Shaping of Basin to Proposed Lines and Grades; Complete In Place	CY	126,000					
15	Site Earthwork & Engineered Fill As Per Grading Plan; Complete In Place	CY	126,000					
16	Furnish, Place And Fine Grade 6" Thick Layer Of Top Soil (On-Site Strippings) On Detention Pond, Maintenance Berms, Side Slopes, And Bottom Of Pond; Complete In Place	CY	10,500					
17	5" Reinforced Concrete Pilot Channel; Complete In Place	SY	1,100					
18	5' Concrete Slope Paving; Complete In Place	SY	1,800					
19	Backslope Swale; Complete In Place	LF	2,246					
20	Backslope Structures; Complete In Place	EA	5					
21	Headwall With Straight Wing Walls; Complete In Place	EA	2					
22	Floatables Collection Screen; Complete In Place	EA	1					
<b>SUBTOTAL - Stormwater Detention Basin Items</b> Items 14 thru 22								

**TOMBALL INDEPENDENT SCHOOL DISTRICT  
CONSTRUCTION OF DETENTION BASIN, STORM WATER PUMP STATION, AND SITE EARTHWORK  
TO SERVE TOMBALL ISD INNOVATION CENTER  
HARRIS COUNTY, TEXAS**

BASE BID - STORM SEWER ITEMS								
ITEM				UNIT PRICE BID	UNIT PRICE		TOTAL PRICE	
NO.	DESCRIPTION	UNIT	QUAN.	(To Be Written in Words)	\$	CENTS	\$	CENTS
23	7' x 5' R.C. Box Storm Sewer, Includes Bends, Transitions Cement Stabilized Sand Bedding and Backfill; Complete In Place	LF	463					
24	6' x 5' R.C. Box Storm Sewer, Includes Bends, Transitions Cement Stabilized Sand Bedding and Backfill; Complete In Place	LF	79					
25	60" R.C.P. Storm Sewer, Includes Cement Stabilized Sand Bedding and Backfill; Complete In Place	LF	761					
26	54" R.C.P. Storm Sewer, Includes Cement Stabilized Sand Bedding and Backfill; Complete In Place	LF	280					
27	48" R.C.P. Storm Sewer, Includes Cement Stabilized Sand Bedding and Backfill; Complete In Place	LF	62					
28	42" R.C.P. Storm Sewer, Includes Cement Stabilized Sand Bedding and Backfill; Complete In Place	LF	149					
29	36" R.C.P. Storm Sewer, Includes Cement Stabilized Sand Bedding and Backfill; Complete In Place	LF	51					
30	30" R.C.P. Storm Sewer, Includes Cement Stabilized Sand Bedding And Backfill; Complete In Place	LF	754					
31	Bore & Jack 30" RCP Storm Sewer; Complete In Place	LF	70					
32	24" R.C.P. Storm Sewer, Includes Cement Stabilized Sand Bedding And Backfill; Complete In Place	LF	270					
33	Type "C" Manhole (All Depths); Complete In Place	EA	5					

**TOMBALL INDEPENDENT SCHOOL DISTRICT  
CONSTRUCTION OF DETENTION BASIN, STORM WATER PUMP STATION, AND SITE EARTHWORK  
TO SERVE TOMBALL ISD INNOVATION CENTER  
HARRIS COUNTY, TEXAS**

<b>BASE BID - STORM SEWER ITEMS (Cont.)</b>								
ITEM				UNIT PRICE BID	UNIT PRICE		TOTAL PRICE	
NO.	DESCRIPTION	UNIT	QUAN.	(To Be Written in Words)	\$	CENTS	\$	CENTS
34	Type "C" Manhole Built on Existing Storm Sewer Complete In Place	EA	4					
35	Type "C" Manhole With "E" Inlet Tops; Complete In Place	EA	3					
36	Junction Box; Complete In Place	EA	1					
37	Junction Box With "E" Inlet Top (All Depths); Complete In Place	EA	2					
38	Trench Safety System For Storm Sewer Construction; (All Depths); Complete In Place	LF	2,869					
39	Drainage Swales; Complete In Place	LF	900					
40	Lift CKC Stormwater Pump Station AXT-120-12-4 as per Sheets No. 34 & 35; Includes Pumps, Piping, Fencing, all Electrical and Associated Appurtenances; Complete In Place	LS	1					
41	All-Weather Access Road; Complete In Place	SY	900					
<b>SUBTOTAL - Storm Sewer Items</b>								
<b>Items 23 thru 41</b>								
<b>BASE BID - WATER LINE ITEMS</b>								
ITEM				UNIT PRICE BID	UNIT PRICE		TOTAL PRICE	
NO.	DESCRIPTION	UNIT	QUAN.	(To Be Written in Words)	\$	CENTS	\$	CENTS
42	12" C900 Restraint Joint Pipe; Complete In Place	LF	30					
43	Relocate Existing Fire Hydrant; Complete In Place	EA	1					
44	Trench Safety; Complete In Place	LF	30					
<b>SUBTOTAL - Water Line Items</b>								
<b>Items 42 thru 44</b>								

TOMBALL INDEPENDENT SCHOOL DISTRICT  
CONSTRUCTION OF DETENTION BASIN, STORM WATER PUMP STATION, AND SITE EARTHWORK  
TO SERVE TOMBALL ISD INNOVATION CENTER  
HARRIS COUNTY, TEXAS

BID TOTALS

GENERAL ITEMS SUBTOTAL	_____
STORMWATER DETENTION BASIN ITEMS SUBTOTAL	_____
STORM SEWER ITEMS SUBTOTAL	_____
WATER LINE ITEMS SUBTOTAL	_____
TOTAL BASE BID	_____
CONTINGENCY ALLOWANCE	\$100,000.00
<b>Total Bid</b>	_____



Company: \_\_\_\_\_

Address: \_\_\_\_\_

City ST Zip

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_ Signature: \_\_\_\_\_

State whether firm is a:  Corporation  Partnership  Individual

**XXXII. EXHIBIT T – KEY SUBCONTRACTORS**

Provide the names of the key subcontractors used in the preparation of your proposal.

Excavation/Grading/Earth Moving \_\_\_\_\_

Structural Concrete \_\_\_\_\_

Mechanical \_\_\_\_\_

Electrical \_\_\_\_\_

Plumbing \_\_\_\_\_

Self-Performed Work \_\_\_\_\_

\_\_\_\_\_

Other Work \_\_\_\_\_

\_\_\_\_\_

XXXIII. EXHIBIT U – PREVAILING WAGE RATES

**Prevailing Wage Rates - School Construction Trades**  
**Effective March 1, 2016**  
**Texas Gulf Coast Area**

<b>CLASSIFICATION</b>	<b>HOURLY RATE</b>
Asbestos Worker	\$15.42
Bricklayers; Masons	\$18.34
Carpenters/Caseworker	\$21.50
Carpet Layers/Floor Installers	\$20.03
Concrete Finishers	\$16.13
Data Comm / Telecom Installer	\$23.50
Drywall Installers; Ceiling Installers	\$16.69
Electricians	\$22.44
Elevator Mechanics	\$30.00
Fire Proofing Installer	\$19.13
Glaziers	\$19.87
Heavy Equipment Operators	\$18.18
Insulators	\$16.16
Ironworkers	\$18.14
Laborers	\$11.81
Lather / Plasterer	\$18.03
Light Equipment Operators	\$15.21
Metal Building Assemblers	\$17.53
Millwrights	\$20.69
Painters/Wall Covering Installers	\$15.75
Pipefitters	\$25.70
Plumbers	\$26.50
Roofers	\$18.80
Sheet Metal Workers	\$20.46
Sprinkler Fitters	\$25.10
Steel Erector	\$19.33
Terrazzo Workers	\$19.67
Tile Setters	\$19.83
Waterproofers/Caulkers	\$19.00

This document was developed by PBK Architects, Inc. in strict accordance with the Texas Government Code Chapter 2258.

**Prevailing Wage Rates  
Worker Classification Definition Sheet**

Asbestos Worker	Worker who removes & disposes of asbestos materials.
Bricklayers/Masons	Craftsman who works with masonry products, stone, brick, block or any material substituting for those materials & accessories.
Carpenter / Caseworker	Worker who builds wood structures or structures of any material which has replaced wood. Includes rough & finish carpentry, hardware and trim.
Carpet Layer / Floor Installer	Worker who installs carpets and/or floor coverings-vinyl tile.
Concrete Finisher	Worker who floats, trowels and finishes concrete.
Data Comm / Telecom Installer	Worker who installs data/telephone & television cable and associated equipment and accessories.
Drywall / Ceiling Installer	Worker who installs metal framed walls & ceilings, drywall coverings, ceiling grids & ceilings.
Electrician	Skilled craftsman who installs or repairs electrical wiring & devices. Includes fire alarm systems & HVAC electrical controls.
Elevator Mechanic	Craftsman skilled in the installation & maintenance of elevators.
Fire Proofing Installer	Worker who sprays or applies fire proofing materials.
Glazier	Worker who installs glass, glazing and glass framing.
Heavy Equipment Operator	Includes, but not limited to, all Cat tractors, all derrick-powered, all power operated cranes, back-hoe, back-filler, power operated shovel, winch truck, all trenching machines.
Insulator	Worker who applies, sprays or installs insulation.
Iron Worker	Skilled craftsman who erects structural steel framing & installs structural concrete Rebar.
Laborer / Helper	Worker qualified for only unskilled or semi-skilled work. Lifting, carrying materials & tools, hauling, digging, clean-up.
Lather / Plasterer	Worker who installs metal framing & lath. Worker who applies plaster to lathing and installs associated accessories.
Light Equipment Operator	Includes, but not limited to, air compressors, truck crane driver, flex plane, building elevator, form grader, concrete mixer (less than 14cf), conveyer.
Metal Building Assembler	Worker who assembles pre-made metal buildings.
Millwright	Mechanic specializing in the installation of heavy machinery, conveyance, wrenches, dock levelers, hydraulic lifts & align pumps.
Painter / Wall Covering Installer	Worker who prepares wall surfaces & applies paint and/or wall coverings, tape and bedding.
Pipefitter	Trained worker who installs piping systems, chilled water piping & hot water (boiler) piping, pneumatic tubing controls, chillers, boilers & associated mechanical equipment.
Plumber	Skilled craftsman who installs domestic hot & cold water piping, waste piping, storm system piping, water closets, sinks, urinals, and related work.
Roofer	Worker who installs roofing materials, Bitumen (asphalt & coal tar) felts, flashings, all types roofing membranes & associated products.
Sheet Metal Worker	Worker who installs sheet metal products. Roof metal, flashings & curbs, ductwork, mechanical equipment and associated metals.
Sprinkler Fitter	Worker who installs fire sprinkler systems & fire protection equipment.
Steel Erector	Worker who erects and dismantles structural steel frames of buildings and other structures
Terrazzo Worker	Craftsman who places & finishes Terrazzo.
Tile Setter	Worker who prepares wall and/or floor surfaces & applies ceramic tiles to these surfaces.
Waterproofer / Caulker	Worker who applies water proofing material to buildings. Products include sealant, caulk, sheet membrane, liquid membranes, sprayed, rolled or brushed.

**END OF DOCUMENT**

This document was developed by PBK Architects, Inc. in strict accordance with the Texas Government Code Chapter 2258.

**XXXIV. EXHIBIT V - AIA DOCUMENT A104-2017**

# DRAFT AIA® Document A104™ - 2017

## Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the «26<sup>th</sup> day of «February » in the year «2024 »  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

Tomball Independent School District  
310 S. Cherry St  
Tomball, Texas  
« »

and the Contractor:  
(Name, legal status, address and other information)

TBD

for the following Project:  
(Name, location and detailed description)

Tomball ISD  
Tomball Innovation Center (TIC)  
11211 FM 2920, Gate 2: "Warehouse Receiving"  
Tomball, Texas 77375  
Detention, Storm Sewer and Earthwork  
Harris County, Texas

The Architect:  
(Name, legal status, address and other information)

Brooks & Sparks, Inc.  
21020 Park Row  
Katy, Texas 77449

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## TABLE OF ARTICLES

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- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
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- 21 CLAIMS AND DISPUTES

### ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

[ **«FEBRUARY 26<sup>th</sup>, 2024 »** ] The date of this Agreement.

[ **«TBD »** ] A date set forth in a notice to proceed issued by the Owner.

Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

«The date of commencement shall be the day that the Contractor receives a Notice to Proceed from the Owner. If a Building Permit is not available for the entire Project, the Contractor must commence work on those portions of the project that do not require a Building Permit on receipt of a Notice to Proceed. The Notice to Proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner.»

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

### § 2.3 Substantial and Final Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

Not later than

By the following date: «September 6<sup>th</sup>, 2024»

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

§ 2.3.4 Subject to adjustments of the Contract Time as provided in the Contract Documents, Final Completion shall be 30 calendar days after the date of Substantial Completion

## ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

Stipulated Sum, in accordance with Section 3.2 below

"Intentionally Deleted"

Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below "Intentionally Deleted"

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be **Dollars and Zero Cents (\$nnn,nnn,nn)**, which includes a **One Hundred Thousand Dollars (\$100,000.00)**, Owner Contingency, all subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:



(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Item	Price
.	\$0.00

**§ 3.2.2** Unit prices, if any:

(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable as defined on the Bid Form Attachment A.)

Item	Units and Limitations	Quan.	Price per Unit (\$0.00)	Total Price
Refer to Exhibit C			\$	\$

**§ 3.2.3** Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price
Owner's Contingency Allowance	\$100,000.00

§ 3.3 Intentionally Deleted I

§ 3.4 Intentionally Deleted I

**§ 3.5** Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

«The parties hereto agree that time is of the essence of this Contract, and that actual and direct damages would be suffered by the Owner if the Contractor does not substantially or finally complete all Work called for in the Contract Document by the specified dates. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. It is therefore expressly agreed, as a part of the consideration inducing the Owner to execute this Contract that the Owner may deduct from any payment(s) due to the Contractor a sum equal to Five Hundred Dollars (\$500.00) for each and every Calendar Day beyond the agreed date which the Contractor has agreed to for Substantial Completion or Final Completion of the Work included in the Contract Documents and all approved change orders including time. It is expressly understood that said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not substantially or finally completed within the agreed time, or with the legally extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only, and in no sense shall be considered a penalty or forfeiture; said damage being caused by additional compensation to personnel, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement. »

**ARTICLE 4 PAYMENT**

**§ 4.1 Progress Payments**

§ 4.1.1 Based upon Applications for Payment submitted to the Owner's Representative by the Contractor and Certificates for Payment issued by the Owner's Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 4.1.3 Provided that an Application for Payment is received by the Owner's Representative not later than the «1<sup>st</sup>» day of a month, and certified by the Owner's Representative not later than the 15<sup>th</sup> day of a month, the Owner shall make payment for the undisputed amount to the Contractor not later than the fifteen (15) days of receipt of the final approved certified Application for Payment by Owner. If an Application for Payment is received by the Owner's

Representative after the date fixed above, payment for the undisputed amount shall be made by the Owner not later than «forty-five » ( «45 » ) days after the Owner's Representative receives and certifies the Application for Payment, except that no payment shall be considered not paid when due or overdue except in accordance with the Texas Government Code Section 2251.021.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 4.1.4 For each progress payment made prior to Final Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)*

«Five percent (5.0%) »

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest as established by Texas Government Code Chapter 2251.

§ 4.1.6 All progress payment requests shall be accompanied by (i) an itemization of all Subcontractors and material suppliers, the amounts due each and the amounts to be paid out of said progress payment to each of them and (ii) by unconditional lien waivers releasing all liens and lien rights with respect to Work for which Owner has made payment under a prior progress payment request in a form reasonably satisfactory to Owner from Contractor and all its subcontractors and material suppliers with contracts in excess of \$25,000.00 (Evidence of prior progress payment shall apply to progress payments 61-days or older). When Contractor submits its request for payment of retainage, Contractor shall submit "All Bills Paid" affidavits and unconditional final lien waivers fully releasing all liens and lien rights with respect to the Work in a form reasonably satisfactory to Owner from Contractor and all its Subcontractors and material suppliers with contracts in excess of \$25,000.00. Applications for Payment shall be certified as correct by Contractor. Each Application for Payment shall also be accompanied by Certified Payrolls and such other affidavits, certificates, information, data and schedules as Owner may reasonably require. The Owner is not required to make any payment to Contractor to the extent reasonably necessary to protect Owner. In addition to the other requirements of this Article, each Application for Payment shall be accompanied by:

- .1 Updated Microsoft Project schedule meeting the requirements of Section 3.10, and;
- .2 A log of weather days, including backup documentation;

## § 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, minus disputed sums, authorized deductions, and liquidated damages, shall be paid by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work;
- .3 all closeout documents are submitted and accepted by the Owner as final including but not limited to, all required notices, agency approvals and lien releases; and
- .4 a final Certificate for Payment has been issued by the Owner's Representative in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Owner's Representative final Certificate for Payment, Owner's Board's vote or other required approval pursuant to applicable policy.

« »

## ARTICLE 5 DISPUTE RESOLUTION

### § 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[ « » ] Arbitration pursuant to Section 21.6 of this Agreement

[  ] Litigation in a court of competent jurisdiction

[  ] Other (Specify)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

**ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS**

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 Intentionally Deleted  
(Insert the date of the E203–2013 incorporated into this Agreement.)

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 6.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Tomball ISD Detention Ponds, Storm Sewers & Earthwork (RFP) #954-23 dated 26 February 2024  
Construction Specifications – Dated – (Final issued date to be determined after bidding and addenda are incorporated.)

Section	Title	Date	Pages

§ 6.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Tomball ISD Detention Ponds, Storm Sewers & Earthwork (RFP) #954-23 dated 26 February 2024.  
Construction Documents – Dated – (Final issued date to be determined after bidding and addenda are incorporated.)

Number	Title	Date

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
1		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 Other Exhibits:  
(Check all boxes that apply.)

- [  ] Stipulated Sum Proposal including any accepted Alternates
- [  ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .2 Other documents, if any, listed below:  
(List here any additional documents that are intended to form part of the Contract Documents.)

Exhibit A, Insurance and Bonds (Requirements provided. Contractor to insert actual documents upon approval.)

Exhibit B, Owner’s Prevailing Wage Rate Schedule

Exhibit C, Contractors Proposal Form – RFP #954-23

**ARTICLE 7 GENERAL PROVISIONS**

**§ 7.1 The Contract Documents**

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Owner’s Representative. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 7.1.1** The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work.

**§ 7.1.2** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement, either or both in accordance with the Owner’s interpretation.

**§ 7.1.3 Intent of Drawings**

**§ 7.1.3.1** Drawings are in part diagrammatic, and do not necessarily show complete details of construction, materials, or their performance, or installation, and do not necessarily show how construction details or other items of work or fixtures or equipment may affect any particular installation. These shall be ascertained by the Contractor from the Owner’s Representative and correlated to bring the parts together to a complete whole.

**§ 7.1.3.2** All dimensions and field conditions shall be verified by field measurements. When called for in the contract documents, dimension verification shall be undertaken by a Licensed Surveyor in the State of Texas.

**§ 7.1.3.5** If Work is required in a manner which makes it impossible to produce the specified quality of Work, or should errors, omissions, or discrepancies exist in the Contract Documents, **the Contractor shall request in writing an interpretation before proceeding with Work.** If Contractor fails to make such a written request at least within 14 days of discovery of such issue, no excuse or claim will thereafter be entertained for failure to carry out Work in a satisfactory manner as specified by Contract Documents. Should conflict occur in or between Drawings and

Specifications which should reasonably have been ascertained by the Contractor, Contractor is deemed to have estimated and included in the Contract Sum the more expensive way of doing the Work.

**§ 7.1.5** All manufactured articles, materials, and equipment shall be incorporated into the Work in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

**§ 7.1.6 Relation of Specifications and Drawings:** The Drawings and specifications are correlative and have equal authority and priority. Should they disagree in themselves, or with each other, the proposals should be based on the most expensive combination of quality and quantity of work indicated. The appropriate method of performing the Work, in the event of the above mentioned disagreements, will be made by the Owner's Representative, in consultation with and subject to the approval of the Owner. The Work is to be furnished if shown on the Drawings and not in the Specifications or vice versa.

## **§ 7.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

## **§ 7.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

## **§ 7.4 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Owner's Representative and the Owner's Representative consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

## **§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service**

**§ 7.5.1** The Owner's Representative and the Owner's Representative consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's Representative or Owner's Representative consultants' reserved rights.

**§ 7.5.2** The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

## **§ 7.6 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

## **§ 7.7 Building Information Models Use and Reliance**

If applicable, any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and

the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### § 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

### § 7.9 Notice

**§ 7.9.1** All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered, whether or not actually received, three days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, and correctly addressed to the party at the address provided in this Agreement. Notice given in any other manner shall be deemed delivered when actually received. Either party may change its address for notice by giving notice of the change of address in accordance with this provision. The Owner's Representative must be copied on notices sent to the Owner.

**§ 7.9.2** Notice of Claims shall be provided in writing, made within 14 calendars of the event, and shall be deemed to have been duly served only if delivered to the designated representative, the Owner's Program Manager. Sufficient detail shall be provided to understand the claim. Where follow-up information is required, it shall be delivered within 14 calendar days of the request to the Owner's Program Manager.

### § 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner's Representative and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## ARTICLE 8 OWNER

### § 8.1 Information and Services Required of the Owner

**§ 8.1.1** Pursuant to the requirements of the Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the work.

**§ 8.1.2** If requested in writing to do so by the Contractor prior to the start of the work, the Owner may, at the Owner's sole discretion, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. THE OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTY TO CONTRACTOR OR TO ANY OTHER PERSON THE RELIABILITY, CONSTRUCTABILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES THE OWNER REPRESENT, WARRANT OR GUARANTY THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY DENIED AND DISCLAIMED. The Owner shall not be liable to the Contractor or any other person for breach of warranty or misrepresentation in the event of any errors or deficiencies in such information provided to the Contractor by the Owner. The Owner's provision of a survey will not relieve the Contractor from its obligations to examine the site or exercise proper precautions relating to the safe performance of the Work.

**§ 8.1.3** Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor or that was caused by the Contractor's negligent conduct.

**§ 8.1.4** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities. Contractor shall pay for all permit fees and inspection fees required for performance of the Work other than inspection and testing fees which the Owner contracts for separately with a third party, and Certificates of Occupancy fees. All of such fees shall be considered Cost of the Work unless the Contractor is required to pay for them without reimbursement due to the Contractor's fault under other provisions of the Contract Documents.

### **§ 8.2 Owner's Right to Stop the Work**

If the Contractor, after written notice and opportunity to cure, but in no event longer than ten (10) days, fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out the Work in accordance with the Contract Documents, the Owner may, at the Owner's discretion, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **§ 8.3 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Owner's Representative and the Owner's Representative may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

### **§ 8.4 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 8.4.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

**§ 8.4.2** The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

## **ARTICLE 9 CONTRACTOR**

### **§ 9.1 Review of Contract Documents and Field Conditions by Contractor**

**§ 9.1.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 9.1.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner's Representative any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner's Representative may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

**§ 9.1.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner's Representative any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner's Representative may require.

## § 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

## § 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. **THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE AND TOBACCO-FREE ZONES, OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR SUBCONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAWS OR REGULATIONS.** Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Owner's Representative and in accordance with a Modification.

- .1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; and (iii) when, in the judgment of the Owner, a substitution would be in the Owner's best interests in terms of cost, time, or other considerations.
- .2 The Contractor must submit to the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified. Proposals for substitutions shall be submitted in triplicate to the Owner in sufficient time to allow the Owner no less than twenty-one (21) working days for review unless a shorter time is agreed upon in writing. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.
- .3 Whether or not any proposed substitution is accepted by the Owner, the Contractor shall reimburse the Owner for any fees charged by consultants for evaluating each proposed substitute.

§ 9.3.4 The Contractor will, before any duties are performed on Owner's property where students are regularly present, and at least annually thereafter, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor if the person has or will have continuing duties



related to the Project, and the duties are or will be performed on Owner's property or at another location where students are regularly present. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code. The Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee, agent or other person who was convicted of a felony under Title V of the Texas Penal Code or any offense that requires the person to register as a sex offender. No person shall be engaged by the Contractor or by any entities with which the Contractor contracts, including but not limited to any suppliers or subcontractors, to work on Owner's property where students are present who has charges pending, or who has been convicted, received probation, or deferred adjudication for the following:

1. Any offense against a child;
2. Any sex offense;
3. Any crimes against persons involving weapons or violence;
4. Any felony offense involving controlled substances; or
5. Any offenses involving the sale or distribution of controlled substances.

It shall be the responsibility of the Contractor and the entities with which the Contractor contracts to ensure compliance with this provision.

**§ 9.3.5 Identification of Employees.** Contractor is responsible for the "badging" of workers and employees on the jobsite for identification. Contractor shall furnish photo identifications of all workers and employees and ensure that all workers and employees are badged and identifiable at all time.

**§ 9.3.6 Prevailing Wages.** The Contractor and each subcontractor who performs any portion of the Work must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code. As required by Chapter 2258 of the Texas Government Code, Contractor and Contractor's Subcontractors shall pay all workers not less than the general prevailing rate of the per diem wages for work of a similar character where the Project is located, as detailed in the Owner's Prevailing Wage Rate Schedule included in Owner's competitive procurement solicitation documents, which is attached hereto and incorporated herein, and any applicable fringe benefits. Wages listed are minimum rates only. Contractor and all Subcontractors shall comply with all state and federal laws including, but not limited to, laws of labor, minimum wage, safety, and equal employment opportunity. The Contractor shall require all subcontractors to comply with the provisions of this Section.

**§ 9.3.7** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

## **§ 9.4 Warranty**

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

## **§ 9.5 Taxes**

Owner is an exempt entity under the tax laws of the State of Texas. The Owner represents that this Project is eligible for exemption for the State Sales Tax on tangible personal property and material incorporated in the project, provided that the Contractor fulfills the requirements of the Limited Sale, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from their suppliers and shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor hereby RELEASES, INDEMNIFIES AND HOLDS HARMLESS Owner from any and all claims and demands

made as a result of the failure of Contractor or any Sub-Contractor to comply with the provisions of any or all such laws and regulations.

#### **§ 9.6 Permits, Fees, Notices, and Compliance with Laws**

**§ 9.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. All of such fees shall be considered Cost of the Work unless the Contractor is required to pay for them without reimbursement due to the Contractor's fault under other provisions of the Contract Documents.

**§ 9.6.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### **§ 9.7 Allowances**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. No allowances shall be included in the Contract Sum unless approved in writing. Where required, the Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be calculated as shown in Article 13. The inclusion of any Allowance or Contingency is solely for the benefit of the Owner. Expenditure of any Allowance or Contingency may only be made with prior written approval of the Owner and according to the procedures of Article 13.5.

#### **§ 9.8 Contractor's Construction Schedules**

**§ 9.8.1** The Contractor, promptly after being awarded the Contract, but prior to the first application for payment, shall submit for the Owner's review and approval a Contractor's construction schedule for the Work. The schedule shall be transmitted in the form of Microsoft Project in the native file format. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; (4) predecessors and successors; (5) phases; (6) baseline start and stop dates; (7) actual start and stop dates; (8) current start and stop dates; (9) delays; (10) critical path; (11) submittals; (12) extensions of the Contract Time authorized by Changes, and (13) Owner activities. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project and, upon such revision, shall be submitted to Owner for their review and approval. In no case will the schedule be updated less frequently than each application for payment. The Contractor's schedule may be considered when evaluating a request for additional time.

**§ 9.8.2** The Contractor shall promptly perform the Work in general accordance with the most recent schedule submitted to the Owner.

#### **§ 9.9 Submittals**

**§ 9.9.1** The Contractor shall promptly review for compliance with the Contract Documents and submit to the Owner Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Owner reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

**§ 9.9.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

**§ 9.9.3** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Owner will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Owner's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Owner will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

#### **§ 9.10 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

#### **§ 9.11 Cutting and Patching**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

#### **§ 9.12 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project. Upon completion of the Work, Contractor shall provide final clean-up of all surfaces, without limitation, including but not limited to cleaning all surfaces, removing any adhesives and stickers, removing all trash and debris, and the like. If Contractor fails to clean up as provided in the Contract Documents, the Owner may clean up and the Owner shall be entitled to reimbursement from Contractor.

#### **§ 9.13 Access to Work**

The Contractor shall provide the Owner with access to the Work in preparation and progress wherever located. Contractor acknowledges that the Work may be performed in connection with an educational facility which may be currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. When work occurs in existing facilities, Contractor understands and accepts the cost and schedule impacts associated with work in existing facilities and the potential delays and disruptions to the progress of the Work and has considered such delays and disruptions in the contract sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other Contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

If the building will be used or occupied by the Owner or members of the public, the Contractor shall be responsible if present, for maintaining safe and ADA-compliant routes of travel from sidewalks and parking areas to the building and shall reroute access as necessary to maintain safe access during construction at no additional cost beyond the agreed contract amount.

#### **§ 9.14 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Owner's consultants harmless from loss on account

thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner's Representative.

#### **§ 9.15 Indemnification**

**§ 9.15.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS OFFICERS, ITS AGENTS AND ITS EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGES, LOSSES (INCLUDING LOSS OF USE RESULTING THEREFROM), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK UNDER THE CONTRACT, PROVIDED THAT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED, IN WHOLE OR IN PART, BY (1) ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (2) THE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (3) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE BY THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, OR (4) THE BREACH OF CONTRACT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER. THE CONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 9.15 SHALL BE IN EFFECT REGARDLESS OF WHETHER OR NOT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER, EXCEPT THAT THE CONTRACTOR'S OBLIGATION SHALL BE LIMITED TO THE COMPARATIVE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER AS DETERMINED BY THE TRIER OF FACT. THE CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY, DEFEND, OR HOLD HARMLESS A PARTY OR PARTIES INDEMNIFIED HEREUNDER AGAINST ANY CLAIM CAUSED SOLELY BY (1) THE NEGLIGENCE OR FAULT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, (2) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OR (3) THE BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OTHER THAN THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER. THE INDEMNITY OBLIGATION SET FORTH HEREIN SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 9.15.**

**§ 9.15.2 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS OFFICERS, ITS AGENTS AND ITS EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR, THE CONTRACTOR'S AGENT, OR THE CONTRACTOR'S SUBCONTRACTOR OF ANY TIER, REGARDLESS OF WHETHER OR NOT SUCH CLAIMS OR SUITS ARE BASED IN WHOLE OR IN PART UPON THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, ITS OFFICERS OR ITS EMPLOYEES. THE INDEMNITY REQUIRED BY THIS PARAGRAPH 9.15.2 IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 9.15.1.**

**§ 9.15.3** In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of

damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 9.15.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN PART BY THE NEGLIGENCE OF OWNER OR ITS AGENTS, OFFICERS, OR EMPLOYEES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 9.15.1.**

**§ 9.15.5** The Contractor agrees to waive any and all claims it may have against the Owner, connected with, resulting from, or arising out of, claims and suits covered by the indemnification agreement contained herein and agrees that any insurance policy provide for the waiver of subrogation rights against the Owner.

**§ 9.15.6** To the extent allowed by law, the Contractor agrees to ensure the indemnity and hold harmless clauses contained in this Section 9.15, including its subparts, with insurance policies, approved by the Owner, and issued by a carrier authorized to do business in the State of Texas, in the minimum amounts set out in this Agreement.

**§ 9.15.7** The provisions of Section 9.15, including all of its subparts, shall survive the termination of the Agreement or the Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of Paragraph 9.15 and its subparts.

## **ARTICLE 10 OWNER'S REPRESENTATIVE**

**§ 10.1** The Owner's Representative will provide administration of the Contract as described in the Contract Documents and representative during construction, until the date the Owner's Representative issues the final Certificate for Payment. The Owner's Representative will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 10.2** Duties, responsibilities, and limitations of authority of the Owner's Representative as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor. Consent shall not be unreasonably withheld.

**§ 10.3** The Owner's Representative will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner's Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Representative will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 10.4** On the basis of the site visits, the Owner's Representative will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Owner's Representative will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner's Representative will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the Owner's Representative's evaluations of the Work and of the Contractor's Applications for Payment, the Owner's Representative will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Owner's Representative has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Owner's Representative will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Owner's Representative will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Owner's Representative will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Owner's Representative decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

#### **ARTICLE 11 SUBCONTRACTORS**

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

#### **ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

#### **ARTICLE 13 CHANGES IN THE WORK**

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted

accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, and Contractor, or by written Construction Change Directive signed by the Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Owner will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Owner will prepare a Change Order.

§ 13.3 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner promptly and before conditions are disturbed.

§ 13.5 Calculation of costs or credits for Changes, minor changes, Proposals, Contingency expenditures and Allowance expenditures:

1. When calculating the Cost of the Work for Changes, minor changes, Proposals, Contingency expenditures and Allowances, the Contractor shall furnish and include substantiation to satisfaction of the Owner of the following from Subcontractors:

Description of Subcontractor Cost of the Work Element

- A Bare Material Costs
- B Labor Hours
- C Labor Costs (Direct only, no markup)
- D Labor Cost Markup (Benefits, employer taxes)
- E Equipment
- F Markup on Work performed by other than Subcontractor's own forces, which shall not exceed 10%
- G Contractor's Overhead and Profit, which shall not exceed 10% of A through F
- H Cost of the Work (Sum of A through G)

2. When Contractor self performs work, when calculating the Cost of the Work for Changes, minor changes, Proposals, Contingency expenditures and Allowances, the Contractor shall furnish and include substantiation to satisfaction of the Owner of the following:

Description of Contractor Cost of the Work Element

- A Bare Material Costs
- B Labor Hours
- C Labor Costs (Direct only, no markup)
- D Labor Cost Markup (Benefits, employer taxes)
- E Equipment
- F Contractor's Overhead and Profit, which shall not exceed 10% of A through E
- G Cost of the Work (Sum of A through F)

No additional Fee or General Conditions cost shall apply to self-performed work.

§ 13.6 The Contractor, upon receipt of written notification by the Owner of a proposed item of change in the Work, shall prepare within 10 calendar days a Change Proposal in such form or forms as directed by the Owner.

- .1 Each separate Change Proposal shall be numbered consecutively and shall include all cost related to the proposed Change in the Work, including any disruption or impact on performance.
- .2 The Subcontractor's itemized accounting shall be included with the Change Proposal.
- .3 If a change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Owner's Representative and the Contractor.
- .4 A revised Change Proposal shall be the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix.
- .5 Upon written approval of a Change Proposal by Owner, and the Contractor, the Owner's Representative will prepare an Allowance Expenditure Authorization or Change Order authorizing such change in the Work; and
- .6 The Contractor shall request extensions of Contract Time due to changes in the Work only at the time of submitting its Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a Contract Time extension. Any request for extensions of Contract Time must be substantiated through the demonstration of the impact of the proposed item of change in the work to the critical path schedule for the project.

#### ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The following days are referenced in the documents:

§ 14.3.1 Calendar Days: The days of the Gregorian calendar. The Contract Time is established in Calendar Days and extensions of time granted for Regular Work Days lost, if any, will be converted to Calendar Days.

§ 14.3.2 Holidays: The days officially recognized by the construction industry in this area as a holiday; limited to the observance days of New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after, and Christmas Day.

§ 14.3.3 Regular Work Days: All calendar days except holidays and Sundays. Requests for extensions of time shall be requested on the basis of Regular Work Days

§ 14.3.4 Anticipated Adverse Weather Days: An allowance of Regular Work Days established as probable days lost due to weather delays; said allowance to be included in the Contractor's Completion Time.

§ 14.3.5 Adverse Weather Days: Regular Work Days when rain, flooding, snow, unusually high winds, excessively wet grounds, or similar circumstances prevent progress on Critical Path portions of the Work. The Contractor will be entitled to an extension of the Contract Time for the net additional time, if any, which results from deducting the amount of Anticipated Adverse Weather Days from the total amount of approved Adverse Weather Days.

§ 14.3.5.1 Further, Adverse Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour day that prevents construction activity exposed to weather conditions or access to the site:

1. Precipitation (rain, snow, or ice) in excess of twenty-five one hundredths of an inch (0.25") liquid measure, hereafter referred to as Standard Baseline in a 24 hour period beginning at 12:00 am and ending at 11:59 PM.
2. Temperatures that do not rise above that required for the day's construction activity if such temperature requirement is specified or accepted as standard industry practice.



3. Sustained wind in excess of twenty-five (25) m.p.h. where it can be shown to impact the work.
4. “dry-out” or “mud” days resulting from precipitation that occur beyond the standard baseline; only if there is a hindrance to site access or sitework and Contractor has taken all reasonable accommodations to avoid such hindrance; and, at a rate no greater than 1 make-up day for each approved lost day or consecutive days of precipitation beyond the Anticipated Adverse Weather Days that total 1.5 inches or more, liquid measure.
5. And when approved, adverse weather prevents work on the project for fifty percent (50%) or more of the Contractor’s scheduled work day and critical path construction activities were included in the day’s schedule, including a weekend day or holiday if Contractor has scheduled construction activity that day.

§ 14.3.6 Net Weather Days: The difference in working days between Anticipated Adverse Weather Days and Adverse Weather Days.

§ 14.4 The date of Substantial Completion is the date certified by the Owner in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) Owner changes ordered in the Work; (2) approved abnormal adverse weather conditions as defined in this agreement., unavoidable casualties, or any causes beyond the Contractor’s control when agreed to before the event; or (3) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine, subject to the provisions of Article 21.

§ 14.6 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled at no cost to the Owner unless the Owner determines the event causing the delay is approved in writing. If approved, the Contractor may be entitled to compensation for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 14.7 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the work, the date upon which each cause of delay ceased to affect the progress of the work and the number of days increase in the contract time claimed as a consequence of each such cause of delay. Additionally, any Claim for additional time based on adverse weather conditions shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Claims shall be made with 7 calendar days of the event. Weekly reporting of adverse weather is required to make a claim.

1. Weather data shall form the baseline for estimating anticipated delays and project durations and determining the occurrence of unusually severe weather.

a. Data in the table below is compiled from the number of days per month that the anticipated weather is expected to be adverse and has been used to establish the baseline of Anticipated Adverse Weather Days per month associated with the project schedule duration.

Anticipated Adverse Weather Days	
Month	Total of Weather Days Allowed
January	6
February	6
March	5
April	4
May	6

June	7
July	6
August	6
September	6
October	6
November	6
December	6

b. The Anticipated Adverse Weather Days shall be submitted within the Contractor's Construction Schedule for documenting future weather events and is considered to be part of the project duration forming the contract time.

2. Submission for Time Extension

- a. Although the Contractor is required to document the occurrence and effect of Adverse Weather on the work, it does not relieve the Contractor of its responsibility to investigate and determine if an excusable delay has occurred.
- b. The schedule of Anticipated Adverse Weather Days included in the Contract is established in Work Days. Similarly, actual weather data should be collected and recorded on a Work Day basis. Monthly summaries should be maintained indicating actual adverse weather conditions and the impact on work activities.
- c. To determine if any particular month experienced Adverse Weather Days, the number of actual Adverse Weather Days is compared to that as provided by the Anticipated Adverse Weather Days. If the number of Adverse Weather Days is greater than the Anticipated Adverse Weather Days, then the contractor has experienced unusually severe weather.
- d. THE DETERMINATION THAT UNUSUALLY SEVERE WEATHER OCCURRED DOES NOT AUTOMATICALLY MEAN THAT THE CONTRACTOR RECEIVES A TIME EXTENSION FOR THE DIFFERENCE OF DAYS BETWEEN THE ANTICIPATED AND ACTUAL ADVERSE WEATHER DELAY DAYS. Further analysis is necessary to determine if the unusually severe weather delayed work activities critical to contract completion. The Contractor's progress schedule must be evaluated to make this determination. If it is found that unusually severe weather delayed the contract, a Contract modification shall be issued.
- e. Claims for increase in the contract time shall set forth in writing the detail noting the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Owner's Representative in writing not later than with each Application for Payment and shall include documentation demonstrating the nature and duration of the delays or disruptions. Where appropriate, a revised construction schedule indicating all the activities affected by the circumstances shall be included with the documentation.
- f. The parties agree that the reconciliation of the change attributable to Adverse Weather days will occur at the time of project final completion.

**ARTICLE 15 PAYMENTS AND COMPLETION**

**§ 15.1 Schedule of Values**

**§ 15.1.1** Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Owner's Representative before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form and supported by the data to substantiate its accuracy required by the Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. The Pay application values shall break out labor and materials for all major work.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

### § 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

### § 15.3.2 Intentionally Deleted

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and (a) incorporated in the Work (b) suitably stored at the Project site or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety;
- .2 The location must be a bonded warehouse;
- .3 The surety must agree, in writing, to each request for payment; and
- .4 The Contractor must bear the cost of the Owner's expenses related to visiting the off-site storage area.

Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

### § 15.4 Certificates for Payment

§ 15.4.1 The Owner's Representative will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Owner's Representative determines is properly due, or notify the Contractor and Owner of the Owner's Representative reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation to the Owner, based on the Owner's Representative evaluations of the Work and the data in the Application for Payment, that, to the best of the Owner's Representative knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Owner's Representative. However, the issuance of a Certificate for Payment will not be a representation that the Owner's Representative has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the

Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 15.4.3** The Owner's Representative may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's Representative opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Owner's Representative is unable to certify payment in the amount of the Application, the Owner's Representative will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Owner's Representative cannot agree on a revised amount, the Owner's Representative will promptly issue a Certificate for Payment for the amount for which the Owner's Representative is able to make such representations to the Owner. The Owner's Representative may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's Representative opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied.
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor.
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment.
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum.
- .5 damage to the Owner or a Separate Contractor.
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay:  
or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 15.4.4** When either party disputes the Owner's Representative decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

## **§ 15.5 Progress Payments**

**§ 15.5.1** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

**§ 15.5.2** Neither the Owner shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

**§ 15.5.3** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 15.5.4** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## **§ 15.6 Substantial Completion**

**§ 15.6.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 15.6.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner's Representative a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such

list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Owner's Representative will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Owner's Representative determines that the Work or designated portion thereof is substantially complete, the Owner's Representative will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. Any provision in the Contract Documents to the contrary notwithstanding, if any of the facilities to be constructed or modified under this Agreement or the Contract require the issuance of a Certificate of Occupancy or other regulatory approval, then Substantial Completion of any such facilities shall not be deemed to have been attained for those facilities prior to the date on which an unconditional Certificate of Occupancy or other regulatory approval is obtained.

§ 15.6.5 The issuance of a Partial Certificate of Substantial Completion shall not relieve the contractor from the obligation to obtain Substantial Completion for the portions of the project not included in the Partial Certificate of Substantial Completion by the dates indicated in this Agreement. The issuance of a Partial Certificate of Substantial Completion shall not relieve the contractor from the assessment of liquidated damages for the portions of the project not included in the Partial Certificate of Substantial Completion by the dates indicated in this Agreement.

#### § 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner's Representative will promptly make such inspection and, when the Owner's Representative finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner's Representative will promptly issue a final Certificate for Payment stating that to the best of the Owner's Representative knowledge, information and belief, and on the basis of the Owner's Representative on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner's Representative final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

### ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

#### § 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

### § 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

## ARTICLE 17 INSURANCE AND BONDS

### § 17.1 Contractor's Insurance

The Contractor shall maintain the types and limits of insurance as set forth in Exhibit A, Insurance and Bond Requirements, until the expiration of the period for correction of Work set forth in Article 18.

### § 17.2 Owner's Insurance

#### § 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

#### § 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; and (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Contractor is required to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract. Contractor shall furnish Bonds meeting the requirements of Exhibit A, Insurance and Bonds.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. Subcontracts, purchase orders and rental agreements entered into by the Contractor shall contain provisions permitting assignment to the Owner upon default by Contractor under the Contract Documents. If the Owner accepts such assignment, the Owner shall be responsible for the payment of amounts which would have been reimbursable to Contractor under this Agreement and for which

payment has not already been made to the Contractor. Contractor shall be responsible for the payment of any other amounts payable under the Contract. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement.

### § 19.2 Governing Law and Exclusive Venue

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. To the maximum extent permitted by applicable law, the parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, the Agreement, the Contract, or any of the Contract Documents shall be in the state district courts of Liberty County, Texas.

### § 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Owner's Representative timely notice of when and where tests and inspections are to be made so that the Owner's Representative may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

### § 19.4 The Owner's representative:

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. Owner's Board of Trustees, by majority vote at a duly noticed and lawfully called public meeting, is the only representative of Owner, a Texas independent school district organized under the laws of the State of Texas, having the power to enter into a contract, to execute a change order requiring an increase in the Contract Sum, or to agree to an extension to the contractual completion date, unless this authority is lawfully delegated. The Board may designate in writing an authorized representative (or representatives), as appropriate, to act on its behalf during the course of construction. Such authorized representative shall have authority to act on behalf of the Owner concerning decisions that do not require a majority vote of the Board of Trustees and shall have the authority to bind the Owner only to the extent expressly authorized or delegated by the Board of Trustees. The authorized representative shall have no implied authority. Such authorized representative shall also bring recommendations to the Board of Trustees on any matter requiring Board approval. The term "Owner" means the Owner or the Owner's authorized representative.

The Owner's Authorized Representative:

*(Name, address, email address and other information)*

Zachery Boles, CFO  
Tomball ISD  
310 S. Cherry Street  
Tomball, Texas 77375

### § 19.5 The Contractor's representative:

*(Name, address, email address and other information)*

TBD

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 19.7 In the event of any suit or action arising out of or in connection with any of the Contract Documents, the prevailing party in such proceedings shall be entitled to recover reasonable attorney fees and court costs.



## ARTICLE 20 TERMINATION OF THE CONTRACT

### § 20.1 Termination by the Contractor

If the Owner's Representative fails to certify payment as provided in Section 15.4.1 for a period of 45 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 45 days, the Contractor may, upon seven additional days' notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, and accepted by the Owner

### § 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials.
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors.
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, y, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Owner's Representative, upon application, and this obligation for payment shall survive termination of the Contract.

### § 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work performed; and costs accepted by Owner up to the effective date of such termination.

## ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, but excluding those arising under Section 16.2, shall be referred initially to the Owner for written recommendation.

### § 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

### § 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, may upon mutual written agreement, after written recommendation by the Owner or thirty (30) days after submission of the Claim to the Owner, be subject to mediation at the request of either party. Owner and Contractor expressly agree that mediation shall not be a condition precedent to the initiation of any litigation arising out of such Claim. Claims for injunctive relief shall not be subject to this Section.

§ 21.6 The parties may endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing to the other party to the Contract. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the mediation shall be conducted by the Center for Public Policy Dispute Resolution at the University of Texas School of Law.

§ 21.7 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Owner's main administrative office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 21.8 Any claim not resolved in mediation shall be subject to litigation

#### § 21.9 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

#### § 21.11 Waiver of Claims for Consequential Damages

Intentionally Deleted.

### ARTICLE 22 Miscellaneous Provisions

§ 22.1 **Safe Access.** If a building will be used or occupied by the Owner or members of the public, the Contractor shall be responsible for maintaining safe routes of travel from sidewalks and parking areas to the building and shall reroute access as necessary to maintain safe access during construction at no additional cost beyond the agreed contract amount.

#### § 22.2 Certifications

§ 22.2.1 If (a) Contractor is not a sole proprietorship; (b) Contractor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Contractor hereby certifies and verifies that neither the Contractor, nor any affiliate, subsidiary, or parent company of the Contractor, if any (the "Contractor Companies"), boycotts Israel, and the Owner's Representative agrees that the Contractor and Contractor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

§ 22.2.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor misrepresents its inclusion on the list, then such omission or misrepresentation shall void this Agreement.

§ 22.2.3 If Contractor is not a governmental body and (a) this Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner; or (b) this Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner in a fiscal year of Owner, the following certification shall apply; otherwise, this certification is not required. As required by Tex.

Gov't Code § 552.374(b), the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this RFP and Agreement and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter." Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Contractor hereby certifies and agrees to (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to Owner for the duration of the Agreement; (2) promptly provide to Owner any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of Owner; and (3) on completion of the Agreement, either (a) provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Contractor, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

«Dr. Martha Salazar-Zamora »«Superintendent of Schools, Tomball ISD »

(Printed name and title)

(Date)

CONTRACTOR (Signature)

(Printed name and title)

(Date)

XXXV. EXHIBIT W - MAPPED LOCATION OF PRE-BID MEETING

