CONTRACTOR AGREEMENT
BETWEEN
BEAUMONT INDEPENDENT SCHOOL DISTRICT AND
[INSERT CONTRACTOR NAME]

This Contractor Agreement ("Agreement") is made and entered into as of the _____ day of _____, 20____ ("Effective Date"), by and between Beaumont Independent School District, an independent school district with its main office located at 3395 Harrison Avenue, Beaumont Texas 77706 ("BISD") and **[INSERT CONTRACTOR'S LEGAL NAME]**, located at **[INSERT CONTRACTOR'S ADDRESS]** ("Contractor"). Throughout this Agreement, BISD and Contractor are sometimes referred to as "Parties," and either may singularly be referred to as a "Party."

WHEREAS, Contractor was selected by BISD to perform Fire Alarm System Replacement (CSP 24.12) services;

WHEREAS, BISD desires to contract with Contractor for the Fire Alarm System Replacement Project in the total amount of the Contract Sum (as hereinafter defined), subject to subsequent amendments by written agreement of the parties or Change Order (in accordance with Article 33 herein); and

WHEREAS, the Parties desire to set forth the terms and conditions of their Agreement herein.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and obligations of the Parties set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound do hereby agree as follows:

1. **Agreement Documents:** This Agreement shall include the following Agreement Documents: (1) the body of this Agreement and any documents incorporated by reference herein; (2) Exhibits or other attachments attached to this Agreement; (3) BISD Job/RFP No. CSP 24.12, if any; (4) Contractor's completed BISD Vendor Packet; (5) the Construction Documents, if any, as defined herein; and (6) Valid Amendments made in accordance with Article 33.

2. **Definitions:** As used in this Agreement, the following terms shall have the meanings set forth below:

a) The word "furnish" shall mean "to supply and deliver to the Project Site, ready for installation."
b) The word "install" shall mean "to place in position and make ready (including without limitation establishing connections to electricity, water, and the like, as applicable) for service or use."
c) The word "provide" shall mean "to furnish and install, complete and ready for intended use."
d) The term "Architect" shall mean the architect, if any, retained by BISD in connection with the Project. If an Architect is retained by BISD, the Architect will have the authority to act on behalf of BISD only to the extent provided in this Agreement.
e) The term "Construction Documents" means any drawings, plans, specifications, or other construction documents prepared by, or approved in writing by, BISD relating to the Project, and any Valid Amendments (made in accordance with Article 33) thereto. Construction Documents do not include proposals, bids, quotes, drawings, samples, plans, and/or specifications drafted by or for Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor, unless approved in writing by BISD.
f) The term "Contract Time" means the period of time allotted in this Agreement, including adjustments authorized by BISD in accordance with Article 33 of this Agreement, for Substantial Completion of the Work.
g) The term "day" means a calendar day, including Saturday, Sunday, and holidays, unless otherwise specifically defined.
h) The term "Project" means replacement of Fire Alarm System at Pietzsch MacArthur Center. The term "Project Site" means any physical location or locations where the Work is to be

perrformed, including BISD premises and any Work storage, parking, mobilization, and staging areas used to support the Work or perform any part of the Work.

i) The term "Subcontractor" means a person or entity that has a direct contract with Contractor to perform a portion of the Work. The term "Subcontractor" is referred to throughout this Agreement as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include any contractor who has a direct contract with BISD (a "Separate Contractor") or any subcontractors of a Separate Contractor.

j) The term "Sub-subcontractor" means a person or entity that has a direct or indirect contract with a Subcontractor to perform a portion of the Work. The term "Sub-subcontractor" is referred to throughout this Agreement as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

k) The term "Substantial Completion" means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with this Agreement such that BISD can occupy or utilize the Work for its intended use.

l) The term "Final Completion" means the stage in the progress of the Work when all Work has been completed in accordance with this Agreement, including without limitation those items listed by Contractor to be completed or corrected after Substantial Completion. Completion of the Work shall be considered final only upon written approval of Final Completion and acceptance of the Work by BISD's designated representative.

m) The term "Valid Amendment" means those supplements, amendments, changes, or modifications to the Agreement Documents that are made in accordance with Article 33.

n) The term "Work" means the doing of all things described in, and all tasks reasonably related to or necessary, proper, or incidental to the construction, work, and services required by, this Agreement, whether completed or partially completed, and includes all other labor, materials, tools, resources, supplies, equipment, permits, insurance, transportation, supervision, management, operations, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under Article 3, including any specific Project requirements defined or described in the Agreement Documents or the Construction Documents. The Work may constitute the whole or a part of the Project and includes all supplies, skill, supervision, transportation services, and other facilities and things necessary, proper, or incidental to the carrying out and completion of the terms of this Agreement and all other items of cost or value needed to produce, construct, and fully complete the Scope of Work.

Technical terms not defined in this Agreement shall have the meanings given in the American Institute of Architects (AIA) "Glossary of Construction Industry Terms" 1991 Edition. Technical terms not defined in the Glossary and used to describe items of Work which so applied have a well known technical or trade meaning shall be held to have such recognized meaning.

3. **Scope of Work:** Contractor agrees to perform the following Scope of Work for BISD:

Replacement of Fire Alarm System at Pietzsch MacArthur Center as defined in the project specifications and drawings associated with CSP 24.12.

3.1 Contractor stipulates and agrees that BISD has no duty to discover any design errors or omissions in any drawings, plans, specifications, or other Construction Documents and has no duty to notify Contractor of same. By entering into any agreement with an Architect, BISD does not warrant the adequacy or accuracy of any drawings, plans, specifications, or other Construction Documents.

Should Contractor or its Subcontractor or Sub-subcontractor discover any discrepancy between the Construction Documents, Contractor shall promptly submit the matter to BISD, which shall promptly make a determination in writing regarding such discrepancy. Any adjustment by Contractor without such prior written determination by BISD shall be at Contractor's own risk and expense, and BISD shall not be liable

for any such adjustment made by Contractor.

4. **Contractor's Representations and Warranties:** In addition to other representations and warranties contained in this Agreement, Contractor represents and warrants the following to BISD:

a) that Contractor shall perform all of the Work in a good and workmanlike manner and in accordance with the requirements of the Agreement Documents, standard industry practices, standards of the profession, and all Construction Documents;

b) that Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and to perform its obligations under this Agreement;

c) that Contractor is able to and will furnish all necessary and available resources, including the tools, materials, supplies, services (including without limitation installation services), equipment, labor, and warranties required to timely complete the Work and to perform its obligations hereunder;

d) that Contractor has, and acknowledges that BISD is relying on Contractor's representation that it has, sufficient experience and competence to perform the Work;

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

f) that the execution of this Agreement and Contractor's performance hereunder are within Contractor's duly authorized powers;

g) that the execution of this Agreement by Contractor is a representation that Contractor has visited the Project Site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with the requirements of the Construction Documents. Contractor shall not be entitled to additional compensation for any additional work caused by its failure to carefully study or compare the Construction Documents prior to execution of the Work;

h) that materials and equipment furnished under this Agreement will be of good quality and new unless the Construction Documents require or permit otherwise. Contractor further warrants, for the maximum period allowed by law, that the Work will conform to the requirements of this Agreement and will be free from defects in equipment, material or design furnished, or workmanship performed by Contractor or any of its Subcontractors or suppliers at any tier, except for those defects inherent in the quality of the Work as required or permitted by the Construction Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by BISD or BISD's consultants, including any Architect BISD may retain for the Project, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment;

i) that materials and labor furnished under this Agreement are warranted in accordance with the warranty provisions contained in the Agreement Documents, or longer as provided by law or the manufacturer/supplier of materials, during which time the Contractor will repair or replace any defective or non-conforming, materials, labor, or Work at its sole expense. Further, Contractor shall remedy, at Contractor's sole expense, any damage to BISD's real or personal property when that damage is the result of Contractor's failure to conform to the requirements of this Agreement or any defect of equipment, material, workmanship, or design furnished by Contractor or any of its Subcontractors or suppliers at any tier. Nothing in the Agreement Documents shall be interpreted as limiting any express or implied warranties. Any conditions or limitations of warranty or liability contained in any proposal provided by Contractor to BISD are not included in, and are hereby expressly excluded from, this Agreement, unless such conditions or limitations are restated in the main body of this Agreement.

j) that the services of any Subcontractors or any Sub-subcontractors will conform to the representations and warranties set forth above;

k) that with respect to all warranties, expressed or implied, from Subcontractors, Sub-subcontractors, manufacturers, or suppliers for Work performed and materials furnished for the Scope of Work of this Agreement, Contractor shall obtain all such warranties, require all such warranties to be executed, in writing, for the benefit of BISD, and enforce all such warranties for the benefit of BISD; and

l) that Contractor will replace, repair, or re-perform Work at its sole expense until the Work meets the warranties set out above.

This warranty shall not limit BISD's rights under this Agreement and/or applicable law with respect to latent defects, gross mistakes, breach of contract or fraud.

5. **Supervision and Construction Procedures:**

5.1 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for, and shall have control over, all construction means, methods, techniques, sequences, and procedures for the Work under this Agreement, as well as the coordination of all portions of the Work under this Agreement, unless otherwise stated in this Agreement. Contractor agrees to use commercially reasonable best efforts, skill, judgment, and abilities to perform the Work detailed in the Scope of Work in an expeditious and timely manner. Contractor shall at all times provide a sufficient number of qualified, skilled personnel, who shall be supervised by Contractor, to accomplish the Work within the time limits set forth in the Agreement Documents.

5.2 Contractor shall fully document its Project activities, in drawings, reports or other methods as appropriate to the Scope of Work and as identified in this Agreement. Pursuant to applicable laws, Contractor shall retain, and shall contractually require each Subcontractor at every tier to retain, all data, books, documents and other records ("records") relating to this Agreement for a period of five (5) years after the end of the Term of this Agreement. This includes all books and other evidence bearing on Contractor's costs and expenses under this Agreement. All records shall be subject to inspection and audit by BISD at reasonable times, without cost to BISD. Upon request, Contractor shall produce the original of any or all such records. If approved by BISD, photographs, microphotographs, or any authentic reproductions may be maintained instead of original records and documents. If an audit or a compliance review has been announced, Contractor shall retain its records and accounts until such audit or compliance review has been completed.

5.3 Contractor shall be responsible to BISD for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, Contractor or any of its Subcontractors. Contractor shall also be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others.

5.4 In accordance with Texas Business and Commerce Code § 116.0001, as soon as practicable after beginning construction of the Project, Contractor shall visibly post the following information at the entrance to the construction site: (1) the name and contact information of the Contractor; and (2) a brief description of the Project.

6. **Labor and Materials:**

6.1 Unless otherwise provided in this Agreement, 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. All equipment, material, and articles incorporated in the Work covered by this Agreement shall be new and of the most suitable grade for the purpose intended. Contractor shall be responsible for any required testing of materials prior to incorporation into the Work.

6.2 Contractor may make substitutions in the Work only with the written consent of BISD,

after evaluation by BISD and its consultant(s) and in accordance with a Change Order pursuant to Article 33.

7. **Contractor's Employees and Subcontractors:**

7.1 Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

7.2 Contractor shall comply with, and shall ensure each Subcontractor and Sub-subcontractor complies with, all applicable laws regarding prevailing wage rates, including, but not limited to, Chapter 2258 of the Texas Government Code and any applicable related federal requirements. Contractor and all Subcontractors and Sub-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, plus any applicable fringe benefits. Contractor shall pay not less than the wage scale of the various classes of labor as detailed in the prevailing wage schedule detailed in Exhibit A ("Prevailing Wage Rates"), which is attached hereto and incorporated herein. The Project does not involve federal funds. Wages listed are minimum rates only. Contractor and Contractor's Subcontractors and Sub-subcontractors shall comply with all state and federal laws including, but not limited to, workers' compensation laws, laws of labor, minimum and maximum salary and wage statutes and regulations, safety, prompt payment and licensing laws and regulations, and equal employment opportunity.

7.3 If applicable, Contractor shall comply with, and shall require its Subcontractors to comply with, the criminal history provisions of Chapter 22 of the Texas Education Code and Title 19, Texas Administrative Code Chapter 153. The form of certification that Contractor has complied with the statutory requirements shall be supplied by BISD upon request and must be supplemented by Contractor and any Subcontractors as required by law or as requested by BISD. If Contractor does not qualify for access to fingerprint criminal history under applicable law, Contractor shall ensure that all necessary information and documentation is submitted to BISD or other entities, as directed by BISD, so that BISD may obtain covered employees' criminal history record information.

8. **Construction by BISD or by Separate Contractors:**

8.1 BISD reserves the right to perform construction or operations related to the Project with BISD's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site. BISD may award or enter into other contracts in its sole discretion; nothing in this Agreement may be construed to imply that Contractor has the exclusive right to provide services to BISD.

8.2 BISD shall provide for coordination of the activities of BISD's own forces and of each Separate Contractor with the Work of Contractor, and Contractor shall cooperate with them. Contractor shall not commit or permit any act that interferes with the performance of work by any other contractor or by BISD's employees. Contractor shall participate with other Separate Contractors and BISD in reviewing all construction schedules, and Contractor shall make any revisions to its Construction Schedule (as hereinafter defined) deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by Contractor, Separate Contractors, and BISD until subsequently revised. Contractor shall reimburse BISD for costs BISD incurs that are payable to a Separate Contractor because of Contractor's (or its Subcontractor's or Sub-subcontractor's) delays, improperly timed activities, failure to adjust its Construction Schedule as required above, or defective work.

9. **Clean-up:** Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work, Contractor shall remove waste materials, rubbish, Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Upon completion of the Work, Contractor shall provide final clean-up of all surfaces, including, without limitation, 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 this

Agreement, BISD may clean up, and BISD shall be entitled to reimbursement from Contractor for all expenses associated with such clean up.

10. **Access to the Work:** BISD is not required to make any inspections to check the quality or quantity of the Work. However, Contractor shall provide BISD and BISD's consultants, including but not limited to any Architect retained by BISD, access to the Work in preparation and progress wherever located. Neither the exercise of such access rights by BISD or its consultants, nor the failure on the part of BISD or its consultants to discover or reject non-conforming Work, shall be deemed an acceptance of such non-conforming Work or a waiver of any rights under this Agreement by BISD.

11. **Contract Sum:** In exchange for Contractor's complete performance of its obligations under this Agreement, BISD shall pay to Contractor the total sum of **[INSERT DOLLAR AMOUNT IN WRITTEN-OUT FORM]** dollars and **[INSERT]** cents **(**$**[INSERT AMOUNT IN NUMERALS])** (the "Contract Sum"), subject to subsequent amendments by written agreement of the parties or Change Order (in accordance with Article 33 herein). The Contract Sum is the total amount payable by BISD to Contractor for performance of the Work under this Agreement. The Contract Sum represents the maximum aggregate contract expenditure by BISD for this Agreement; in no event shall payments by BISD under this Agreement exceed the Contract Sum. BISD is Texas sales and use tax exempt and will not reimburse Contractor for any Texas sales taxes incurred by Contractor.

The Term of this Agreement is a commitment of BISD current revenue only. Every payment obligation of BISD under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. Notwithstanding anything to the contrary in this Agreement, BISD is obligated to make payments only as approved each year by BISD's Board of Trustees. BISD's Board of Trustees retains the right to terminate the Agreement at the expiration of each budget period of BISD. Contractor acknowledges that performance by BISD under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by BISD's Board of Trustees. As such, if the Legislature fails to appropriate or allot the necessary funds, or if the Board fails to allocate the necessary funds, then BISD shall issue written notice to Contractor and BISD may, in its sole discretion, terminate or reduce the Scope of Work to be provided under this Agreement without penalty or further duty or obligation to Contractor, at any time upon written notice to Contractor. In the event of termination of this Agreement under this provision, BISD shall pay Contractor for goods and/or services accepted by BISD prior to the effective date of termination. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of BISD. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by BISD at the end of the period for which funds are available.

In addition, renewal of this Agreement or continuation beyond the current BISD fiscal year, if any, will be in accordance with Texas Local Government Code § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Agreement or obligation imposed on BISD by this Agreement, BISD shall have the right to terminate this Agreement without default or liability to Contractor resulting from such termination, effective as of the expiration of each budget period of BISD or the end of any fiscal year of BISD, if it is determined by BISD, in BISD's sole discretion, that there are insufficient funds to extend this Agreement.

12. **Progress Payments and Contractor's Statements:**

12.1 Contractor will furnish BISD an itemized, detailed, written statement of completed portions of the Work and request payment therefore ("Statement"). Such Statement shall be accompanied by a schedule of values showing progress of the Work and shall be supported by data substantiating Contractor's right to payment as BISD may require, including, without limitation, copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in this Agreement.

12.2 BISD's payment to Contractor of the unpaid and undisputed portion of the Contract Sum due to Contractor shall be made no later than forty-five (45) days after Final Completion of the Work, upon

Contractor's presentation of Contractor's Statement in an amount not to exceed the Contract Sum, unless subsequently amended by written agreement of the parties or Change Order, in accordance with Article 33. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

BISD shall notify Contractor of an error or disputed amount in an invoice submitted for payment by Contractor no later than the 21st day after the date BISD receives the invoice and shall include in such notice a detailed statement of the amount of the invoice that is disputed, in accordance with Texas Government Code Section 2251.042(a). If Work or any portion thereof has not met the satisfactory approval of BISD's designated representative, current and future payments shall not be made until both Parties agree that the Work or the portion thereof has been completed in a satisfactory manner or the Work is acceptable; notwithstanding the foregoing, BISD may withhold from payments required no more than 110% of the disputed amount. Notwithstanding any provision herein to the contrary, no payment of amounts owed hereunder shall be considered past due or not paid when due except in accordance with Section 2251.021 of the Texas Government Code.

Final payment shall be conditioned upon Contractor's completion of all punchlist work, Contractor's submission of all required close-out documents, and BISD's receipt of final lien releases from Contractor, its Subcontractors, Sub-subcontractors, and suppliers (conditioned only upon receipt of final payment) in the form required by Texas Property Code Chapter 53.

12.3 At BISD's sole election, BISD may make monthly progress payments to Contractor of unpaid and undisputed amounts due to Contractor within forty-five (45) days of BISD's receipt of Contractor's Statement.

12.4 Contractor warrants that title to all Work covered by a Statement will pass to BISD no later than the time of payment. Contractor further warrants that, upon submittal of a Statement, all Work submitted on a previous Statement and payments received from BISD shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of any liens, claims, security interests, or encumbrances in favor of Contractor, Subcontractors, Sub-subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, or equipment relating to the Work.

12.5 Neither a progress payment nor partial or entire use or occupancy of the Project by BISD shall constitute acceptance of Work not in accordance with this Agreement.

13. **Retainage:** BISD shall withhold from payment(s) to Contractor a retainage as follows: if the Agreement is valued at less than $5 million, BISD shall retain ten percent (10%); if the Agreement is valued at $5 million or more, BISD shall retain five percent (5%). The retainage shall be paid to Contractor upon Final Completion of the Work. Completion of the Work shall be considered final upon written approval by BISD's designated representative, as further detailed in Article 23.

Per Tex. Gov't Code Section 2252.032(f), on application to BISD for final payment and release of retainage, BISD may withhold retainage if there is a bona fide dispute between BISD and Contractor and the reason for the dispute is that labor, services, or materials provided by the Contractor, or by a person under the direction or control of the Contractor, failed to comply with the express terms of the Agreement, or if the surety on any outstanding surety bond executed for the Agreement does not agree to the release of retainage. BISD shall provide to Contractor written notice of the basis on which BISD is withholding retainage under this Article.

14. **Taxes:** BISD is tax exempt, and Contractor shall avail itself of all tax exemptions applicable to Contractor's Work or expenses. BISD shall provide a tax exemption certificate to Contractor upon Contractor's request. BISD shall not be liable for any taxes resulting from this Agreement, except where otherwise required by law.

A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any franchise taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

15. **Permits, Fees, Notices, and Compliance with Laws**

15.1 Unless otherwise provided in Agreement, after execution of this Agreement, Contractor shall secure and pay for any building permits as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured and legally required at the time this Agreement is executed.

15.2 Contractor shall comply with, and takes full responsibility for complying with, safety rules, guidelines, standards, regulations, and requirements promulgated by the Occupational Safety and Health Administration (OSHA) applicable to the Project. Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss. Contractor shall indemnify BISD for fines, penalties, and corrective measures that result from the acts of commission or omission of Contractor, its Subcontractors or Sub-subcontractors, agents, employees, or assigns, or from any of their failure to comply with such safety rules and regulations.

15.3 Contractor acknowledges that BISD is subject to the Texas Public Information Act, and Contractor waives any claim against and releases from liability BISD, its trustees, officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement or otherwise created, assembled, maintained, or held by Contractor or BISD and determined by BISD, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

In addition, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement, and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. The requirements of that subchapter include, without limitation, the preservation of all contracting information (including, but not limited to, records, communications, and other documents related to the bid process, contract, payments, receipts, scope of work/services, and performance); the provision to BISD, upon its request, of all contracting information; and, upon completion of this Agreement, the provision to BISD of all contracting information in Contractor's possession, or preservation of the contracting information as provided by the records retention requirements applicable to BISD.

16. **Intellectual Property:** Contractor shall pay all royalties and license fees. Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold BISD harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by Construction Documents, or where the copyright violations are contained in Construction Documents or other documents prepared by BISD. However, if Contractor (1) has reason to believe that any required design, process, or product is an infringement of a copyright or a patent and fails to promptly furnish such information to BISD, or (2) should reasonably have known that any required design, process, or product is an infringement of a copyright or a patent, then Contractor shall be responsible for all resulting defenses and losses.

16.1 Contractor shall treat any information supplied by BISD or information pertaining to BISD as confidential and shall not disclose any such information to others except as necessary for the performance of this Agreement, as authorized by BISD in writing, or when required by law.

17. **Construction Schedule:** Contractor has prepared and submitted a Contractor's construction

schedule for the Work, which is attached hereto and incorporated herein as Exhibit B ("Construction Schedule"). Contractor shall perform the Work in general accordance with the Construction Schedule. The Construction Schedule shall be related to the entire Project, to the extent required by the Construction Documents, and shall provide for expeditious and practicable execution of the Work. The Construction Schedule shall be revised in accordance with Article 33 at appropriate intervals, as required by the conditions of the Work and Project. Contractor shall submit to BISD updated Construction Schedule(s) as necessary to reflect appropriate schedule revisions and shall take whatever action is necessary and within Contractor's control to assure that the Project completion schedule is met.

18. **Professional Services:** 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 Construction Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Construction Documents, BISD and BISD's Architect, if any, will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other documents prepared by such professional. BISD shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided BISD has specified to Contractor all performance and design criteria that such services must satisfy.

19. **Priority of Documents:** In the event of a conflict between or among the Agreement Documents, the following hierarchy ("Agreement Hierarchy") shall prevail: (1) the body of this Agreement (including Valid Amendments thereto, if any, made in accordance with Article 33 of this Agreement); (2) any documents incorporated by reference within this Agreement; (3) Exhibits or other attachments attached to this Agreement (including Valid Amendments thereto, if any, made in accordance with Article 33 of this Agreement); (4) Contractor's completed BISD Vendor Packet; (5) the Construction Documents, if any (including Valid Amendments thereto, if any, made in accordance with Article 33 of this Agreement); and (6) BISD Job/RFP No. CSP 24.12, if any. Contractor's completed BISD certifications are fully incorporated herein for any and all purposes.

The following documents are not included within the Agreement Documents or the Construction Documents: proposals, bids, quotes, drawings, samples, plans, specifications, and/or other document or record drafted by or for Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor; any Change Order not in accordance with Article 33 of this Agreement; any Contractor's work ticket, invoice, statement, purchase order, or published rate schedule; any purchase or work orders, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Contractor after the Effective Date of this Agreement; and any other type of memoranda between BISD and Contractor pertaining to the subject matter in this Agreement (collectively, "Non-BISD Documents"). In no event shall the terms of Non-BISD Documents take priority over the terms of the documents listed in the Agreement Hierarchy. In the case of an inconsistency between the terms of any document listed in the Agreement Hierarchy and the terms of the Non-BISD Documents, which inconsistency is not clarified by a Valid Amendment, Contractor is deemed to have included the better quality and/or greater quantity of Work in the Contract Sum.

Nothing in this Article prohibits Valid Amendments to be made in accordance with Article 33.

20. **BISD's Right to Stop the Work and Right to Carry Out the Work:**

20.1 BISD may temporarily stop the Work, at any time, for BISD's convenience and without cause, for a period not to exceed two (2) weeks, upon three (3) days' written notice to Contractor. The Work may be temporarily stopped for a period longer than two (2) weeks by a Valid Amendment in

accordance with Article 33. If the Work is temporarily stopped at BISD's request, the Contract Time shall be adjusted accordingly in accordance with Article 33.

20.2 If Contractor fails to correct Work that is not in accordance with the requirements of this Agreement or repeatedly fails to carry out Work in accordance with this Agreement, BISD may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of BISD to stop the Work shall not give rise to a duty on the part of BISD to exercise this right for the benefit of Contractor or any other person or entity, except as may otherwise be provided in this Agreement.

20.3 If Contractor defaults or neglects to carry out the Work in accordance with this Agreement and fails, within a ten-day period after receipt of written notice from BISD, to commence and continue correction of such default or neglect with diligence and promptness, BISD may, without prejudice to other remedies BISD may have (including, but not limited to, termination of this Agreement), correct such deficiencies. In such case, an appropriate Change Order shall be issued, in accordance with Article 33, deducting from payments then or thereafter due Contractor the reasonable cost of correcting such deficiencies, including BISD's expenses and compensation for additional services, if any, by BISD's consultants, including but not limited to the services of an Architect retained by BISD, made necessary by such Contractor default, neglect, or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to BISD.

21. **BISD's Right to Occupy**: BISD and Contractor agree that BISD may occupy and/or use, without prejudice to the right of either Party, any completed or largely completed portions of the Project, notwithstanding the time for completing the entire Work or such portions may not have expired. Such beneficial occupancy and use shall not constitute Substantial Completion or BISD's acceptance of any Work not in accordance with this Agreement.

22. **Date of Commencement:** The date of commencement of the Work is **[INSERT]**. Contractor shall not knowingly, except by agreement or instruction of BISD in writing in accordance with Article 33, prematurely commence operations on the Project Site or elsewhere prior to either of the following: (1) the date of commencement of the Work, or (2) the effective date of insurance required to be furnished by Contractor pursuant to Article 26 of this Agreement. The date of commencement of the Work shall not be changed by the effective date of such insurance.

23. **Date of Substantial Completion: [INSERT]. The Date of Final Completion is thirty (30) days after Substantial Completion.**

23.1 Time limits stated in this Agreement are of the essence of this Agreement. By executing this Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work. Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and Final Completion within thirty (30) days thereafter. If Contractor falls behind the schedule detailed in this Agreement, Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by BISD. Without additional cost to BISD, BISD may require Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction equipment, and to submit for approval any supplementary schedule or schedules as BISD deems necessary to demonstrate how the approved rate of progress will be regained.

23.2 BISD and Contractor agree that Contractor's failure to meet the deadlines established in this Agreement will cause damage to BISD, but such damage is difficult to establish. It is therefore expressly agreed, as a part of the consideration inducing BISD to execute this Agreement, that Contractor's failure to achieve Substantial Completion and Final Completion by the agreed dates shall result in liquidated damages in the amount of $250.00 per day for each and every day after the date on which Substantial Completion or Final Completion was set to occur until Substantial Completion and Final Completion are achieved. Contractor agrees that BISD may deduct liquidated damages from the final payment made to Contractor or from any compensation otherwise owed to Contractor. It is expressly understood that

payment of liquidated damages in the amount of $250.00 per day is agreed upon by the Parties as a fair estimate of the pecuniary damages which will be sustained by BISD in the event that the Work is not substantially completed or finally completed within the agreed times, or within the legally extended times, if any, otherwise provided herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damage being caused by additional compensation to personnel, for loss of interest on money and other miscellaneous increased costs, all of which are difficult of exact ascertainment. Liquidated damages shall be in addition to, and not in lieu of, any other rights or remedies BISD may have against Contractor for failure to timely achieve Substantial Completion and Final Completion of the Work.

23.2.1 In addition to all other rights and remedies that BISD may have, BISD shall have the right to setoff, against any and all amounts due to Contractor by BISD, whether due under this Agreement or any other agreement between BISD (including any division of BISD) and Contractor, any sums to which BISD is entitled under this Agreement, as determined by BISD in its sole discretion, including, without limitation, sums due by Contractor to BISD as a result of indemnification obligations and/or warranty claims.

23.3 When Contractor considers that the Work, or a portion thereof which BISD agrees to accept separately, is substantially complete, Contractor shall prepare and submit to BISD 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 Contractor to complete all Work in accordance with this Agreement.

23.4 When Contractor considers that the Work is finally complete, Contractor shall prepare and submit to BISD written notice that the Contractor finds the Work to be finally complete. Completion of the Work shall be considered final only upon written approval of Final Completion and acceptance of the Work by BISD's designated representative. Contractor shall, without charge, replace or correct Work found by BISD not to conform to the requirements of this Agreement, unless BISD consents, in writing, to accept the Work with an appropriate adjustment in the Contract Sum. Contractor shall promptly segregate and remove rejected material from the Project Site, if required by BISD. BISD's approval or acceptance of Contractor's Work shall not release Contractor from any liability for any defects in the Work. Final payment of the Contract Sum, constituting the unpaid balance of the Contract Sum, shall not be paid until the Work has been finally completed and accepted by BISD's designated representative, in writing. Final payment shall be paid by BISD to Contractor within forty-five (45) days of BISD's approval of Final Completion and acceptance of the Work.

23.5 If BISD disputes a portion of any payment due to Contractor under this Agreement, BISD may withhold any such disputed amounts, without interest, for a period of thirty (30) days after such payment would otherwise have been due to Contractor, as long as BISD makes a reasonable attempt to resolve the dispute with Contractor. If, after such thirty (30) day withholding period, BISD continues to dispute any portion of the payment, BISD may continue to withhold any such disputed amount until the dispute is resolved, except that, if BISD is found to have wrongfully withheld such disputed amount, Contractor shall be entitled to interest on the wrongfully withheld amount from the original date that payment of such amount was due to Contractor until the date BISD pays such amount to Contractor in full. The interest rate under this section may not exceed the Judgment Rate published by the Texas Office of Consumer Credit Commissioner, effective as of the original date that payment of such amount was due to Contractor.

23.6 If, within one (1) year after the date of Final Completion of the Work, any of the Work is found to be not in accordance with the requirements of this Agreement, Contractor shall correct it, at Contractor's sole cost and expense, promptly upon receipt of written notice from BISD to do so. BISD shall give such notice promptly after discovery of the nonconformance. If Contractor fails to correct nonconforming Work within a reasonable time after receipt of notice from BISD, BISD may correct it in accordance with Article 20. Nothing contained in this Article 23.6 shall be construed to establish a period of limitation with respect to other obligations Contractor has under this Agreement. Establishment of the one-year period for correction of Work as described herein relates only to the specific obligation of

Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with this Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

24. **BISD's Right to Terminate:** This Agreement may be terminated by BISD, with or without cause, upon written notice to Contractor. On the effective date of termination, as stated by BISD in its notice, Contractor shall immediately: (1) cease Work after taking all actions necessary, or as directed by BISD, for protection and preservation of the Work already performed and of the property related to this Agreement that is in the possession of Contractor and in which BISD has or may acquire an interest; (2) place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete any Work not terminated by BISD; (3) assign to BISD, as directed by BISD, all right, title, and interest of Contractor under the subcontracts to the extent they relate to the Work terminated, in which case BISD shall have the right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by BISD, Contractor shall settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this Article; (4) as directed by BISD, transfer title and deliver to BISD the fabricated or un-fabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, as well as the other property that, if the Work had been completed, would be required to be furnished to BISD; and (5) complete performance of the Work not terminated by BISD, if any. Contractor shall be entitled to payment for all Work performed and accepted by BISD up to the effective date of termination and shall provide BISD with a pro-rata refund for any goods or services paid for but not yet provided or accepted as of the effective date of termination. Termination of this Agreement under any circumstances whatsoever shall not affect or relieve Contractor from any obligation or liability that may have been incurred or will be incurred, and such termination by BISD shall not limit any other right or remedy available to BISD at law or in equity.

25. **Payment and Performance Bonds:** If required under applicable law, Contractor, at its own expense, shall furnish BISD: (1) a Performance Bond for contract amounts over $100,000.00 in an amount equal to One Hundred Percent (100%) of the Contract Sum as security for the faithful performance of this Agreement and (2) a Labor and Material Payment Bond for contract amounts over $25,000.00 in an amount not less than One Hundred Percent (100%) of the Contract Sum as security for the payment of all persons performing labor on the project under this Agreement and furnishing materials in connection with this Agreement. The Performance Bond and the Labor and Material Payment Bond shall be delivered to BISD not later than the date of execution of this Agreement, and the Work shall not be started until the bonds and issuing companies have been accepted as satisfactory in writing by BISD.

The Performance Bond must satisfy the requirements of Chapter 2253 of the Texas Government Code. The Labor and Material Payment Bond must satisfy the requirements of Subchapter I, Chapter 53 of the Texas Property Code. The bonds must be executed by a corporate surety authorized to do business in Texas and licensed in Texas to issue surety bonds, and must be executed by a surety company that is authorized and admitted to write surety bonds in Texas. Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney. The bonds shall be in accordance with Texas Insurance Code Chapter 3503. If the amount of the bond exceeds $100,000.00, the surety must: (a) Hold a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or (b) Have obtained reinsurance for any liability in excess of $100,000.00 from a reinsurer that is authorized and admitted as a reinsurer in Texas and is the holder of a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

Contractor shall also file copies of each bond and this Agreement with the county clerk of the county in which all or part of the Work is being performed; Contractor shall furnish BISD with a file receipt. The bonds must be made payable to BISD and shall remain in full force throughout the warranty period of this Agreement.

26. **Insurance:**

26.1 At its sole cost and expense, Contractor shall purchase and maintain the following insurance coverage in at least the following limits, on an Occurrence basis:

a) Automobile Liability covering Any Auto - $1,000,000 Combined Single Limit

b) Workers' Compensation (with limits to comply with the requirements of the Texas Workers' Compensation Act) and Employer's Liability ($1,000,000 Limit), including all states, U.S. Longshoremen, Harbor Workers, and other endorsements, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, as required by statute and which meets the statutory requirements of Texas Labor Code Section 401.011(44) for all employees of Contractor providing services on the Project, for the duration of the Project. Contractor shall comply with the requirements of Title 28, Texas Administrative Code Rule Section 110.110, Reporting Requirements for Building or Construction Projects for Governmental Entities.

c) Comprehensive (Commercial) General Liability Occurrence Form including, but not limited to, Premises, Completed Operations, Independent Contractors, Products Liability, Broad Form Property Damage, Blanket Contractual Liability, Pollution, Personal and Advertising Injury Liability, and, where the exposure exists, coverage for watercraft, blasting collapse, explosions, blowout, catering, and underground damage. (Any XCU exclusions must be removed when underground work is performed.) Property/Builder's Risk coverage will also be provided by Contractor, unless otherwise agreed in writing by an authorized representative of BISD.

- $1,000,000 Occurrence
- $2,000,000 Aggregate
- $1,000,000 Personal Injury
- $500,000 Fire Damage
- $5,000 Medical Payments
- Per Project Aggregate (CG 70 49)

26.2 All insurance required under this Agreement shall protect Contractor from claims which may arise out of or result from Contractor's operations, whether such operations are performed by Contractor or by any Subcontractor, Sub-subcontractor, or by anyone for whose acts any of them may be liable. In addition, insurance as is required herein shall be primary and non-contributing with any other valid and collectible insurance available to BISD.

26.3 All policies of insurance required hereunder shall be purchased from a company or companies acceptable to BISD, with an AM Best rating of at least "A-X," lawfully licensed by the Texas Department of Insurance, and authorized to do business in the jurisdiction in which the Project is located.

26.4 All policies of insurance required of Contractor hereunder, including any renewals thereof, shall: (i) waive all rights of subrogation against BISD, its officers, employees, and agents; (ii) include the location and/or description of the Project and the bid number, CSP number, or Purchase Order number; and (iii) not be canceled, materially changed, or allowed to expire or lapse (non-renewed) without a minimum of thirty (30) days' prior written notice to BISD. A "Waiver of Subrogation" clause in favor of BISD must be attached to the Workers' Compensation, General Liability, and Automobile Liability insurance policies. In addition, the General Liability and Automobile Liability policies, including any renewals thereof, shall name BISD as an "Additional Insured."

26.5 Contractor shall not commence Work until all required insurance coverage has been obtained and such insurance has been reviewed and accepted by BISD. Certificates of Insurances on the current ACORD form shall be issued to BISD showing all required insurance coverage. In addition to certificates of insurance, copies of policy endorsements must be provided (a) listing BISD as Additional Insured, (b) showing waivers of subrogation in favor of BISD, and (c) including CG 02 05, TE 02 02A, and WC 42 06 01 (or their equivalents) specifically naming BISD.

26.6 All insurance required hereunder must be maintained for three (3) years following Substantial Completion, with Certificates of Insurance provided. Contractor shall be responsible for payment of all deductibles; BISD shall approve in writing the deductibles selected. If any policy has aggregate limits, a statement of claims against the aggregate limits is required. If Contractor fails to maintain the required amounts of insurance or allows the policies to lapse or expire during the time when they are required to be in effect pursuant to this Agreement, BISD may purchase said insurance and deduct the cost of obtaining the insurance from amounts owed to the Contractor; if the insurance costs exceed amounts owed to the Contractor, Contractor shall pay BISD the difference promptly upon receipt of notice from BISD to do so.

26.7 BISD reserves the right to review these insurance requirements during the Term of the Agreement and to make reasonable adjustments to insurance coverage and limits requirements when deemed reasonably prudent by BISD in its sole discretion, based upon changes in statutory laws, court decisions, or other potential increase in exposure to loss.

26.8 The insurance requirements stated herein do not establish limits of Contractor's liability and are separate from and independent of any indemnification obligation of Contractor.

26.9 Contractor shall also require that its Subcontractors and Sub-subcontractors provide evidence of insurance of the same types and in the same amounts as are required of Contractor herein, prior to conducting any Work on the Project. Contractor shall obtain and make available for inspection by BISD upon request current certificates of insurance evidencing insurance coverage carried by such Subcontractors and Sub-subcontractors.

26.10 If Contractor fails (or its Subcontractors or Sub-subcontractors fail) to obtain or maintain any of the required insurance coverage, BISD may obtain and maintain such insurance, and Contractor shall reimburse BISD for the actual cost of such insurance within thirty (30) days after receipt of BISD's invoice, or BISD may offset such amount against any payment due Contractor.

27. **Relationship of Parties:** It is understood and agreed that Contractor is engaged under this Agreement as an independent contractor and not as an agent, joint venturer, business partner, or employee of BISD. Neither Contractor nor any employees, volunteers, or agents contracted by Contractor shall be deemed for any purposes to be employees, volunteers, or agents of BISD. Contractor shall assume full responsibility for the actions of its employees, volunteers, and agents (including without limitation all Subcontractors and Sub-subcontractors and their employees, volunteers, and agents) while performing any services incident to this Agreement and shall remain solely responsible for their supervision, daily direction and control, payment of salary (including withholdings), workers' compensation, disability benefits, and like requirements and obligations. Neither Contractor nor its employees, volunteers, or agents shall be entitled to benefits of any kind to which BISD's employees are entitled, including but not limited to unemployment compensation, workers' compensation, health insurance, or retirement benefits. Contractor assumes full responsibility for payment of all federal, state, and local taxes or contributions, including, but not limited to, unemployment insurance, social security, Medicare, and income taxes with respect to Contractor and Contractor's employees, volunteers, and agents. This Agreement shall not be construed to create or imply any partnership, employer-employee relationship, or joint venture between the Parties hereto, nor shall it be construed or deemed an endorsement of a specific company or product. This Agreement does not authorize either Party to serve as the legal representative or agent of the other. Neither Party has any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other Party.

28. **Indemnity:** **TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS BISD, ITS TRUSTEES, OFFICERS, CONSULTANTS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LOSSES, EXPENSES, FINES, PENALTIES, COSTS, AND LIABILITIES (INCLUDING BUT NOT**

LIMITED TO REASONABLE ATTORNEYS' FEES, LITIGATION EXPENSES, AND COURT COSTS), ARISING FROM ANY CLAIM OR CAUSE OF ACTION FOR ANY INJURY (INCLUDING DEATH), LOSS, OR DAMAGE TO ANY PERSON OR PROPERTY CAUSED BY OR ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT (COLLECTIVELY, "CLAIM") TO THE EXTENT THE CLAIM ARISES FROM THE NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT, OR VIOLATION OF LAW BY CONTRACTOR, ITS EMPLOYEES, AGENTS, SERVANTS, CONTRACTORS, OR SUBCONTRACTORS. CONTRACTOR'S OBLIGATIONS UNDER THIS CLAUSE SHALL SURVIVE ACCEPTANCE OF THE WORK AND FINAL PAYMENT BY BISD.

29. **Notices:** All notices, consents, and requests ("Notices") given under this Agreement shall be given by hand-delivery, certified mail, registered mail, or courier service providing proof of delivery, addressed to the proper Party, at the addresses indicated at the bottom of this Agreement. Notices shall be deemed to have been duly served if delivered in person to the designated representative of the Party; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the address of the Party as listed below. Notices are effective upon receipt. Each Party may change the address at which Notice may be sent to that Party, and/or change its designated representative (as hereinafter defined), by giving advance written Notice of such change to the other Party as outlined in this Article 29.

29.1 Designated Representatives.

a) BISD designates as its representative for matters related to this Agreement:
Allen DeVault, Director of Maintenance and Operations, or his/her designee
BISD's representative shall be authorized to act in BISD's behalf with respect to this Agreement, except for those matters which require approval of the BISD Board of Trustees. Contractor shall coordinate its Work solely through BISD's designated representative.

b) Contractor designates as its representative for matters related to this Agreement:
[INSERT NAME], **[INSERT TITLE]**
Contractor's designated representative shall act on behalf of Contractor with respect to this Agreement and all phases of the Work and shall be available as required for the benefit of BISD.

30. **Compliance With Laws:** Contractor agrees that it will, in its performance of its obligations hereunder, observe and fully comply with all applicable federal, state, county, and local laws, regulations, rules, and ordinances of all relevant authorities that in any manner affect the provision of services and performance of all obligations undertaken pursuant to this Agreement, including but not limited to those pertaining to safety, and shall maintain any and all applicable licenses, certifications, registrations, or other approvals required to fully perform its obligations hereunder. Contractor represents and warrants that all Work shall comply with the Americans with Disabilities Act and all other applicable codes, regulations, and laws. Contractor shall comply with all state and local building code requirements. Contractor is required to adhere to all applicable local, state, and national design codes and requirements as well as BISD's construction design standards. Contractor shall ensure that it and all of its Subcontractors at all tiers prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

If Contractor is a corporation or a limited liability company, Contractor warrants, represents, and agrees that (1) it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation or organization; (2) it is duly authorized and in good standing to conduct business in the State of Texas; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and (4) the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

31. **No Waiver:** No action or failure to act by BISD or Contractor shall constitute a waiver of a right or duty afforded either Party under this Agreement, including, but not limited to, the requirements of Article 33, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder,

except as may be specifically agreed in writing, signed by both Parties. The waiver by any Party of any right, obligation, or breach of this Agreement shall not be construed as a waiver of any other or subsequent right, obligation, or breach.

The Parties expressly acknowledge that BISD is an agency of the State of Texas, and nothing in this Agreement, including but not limited to its execution and the performance by BISD of its functions and obligations hereunder, is intended to waive or relinquish, or shall waive, relinquish, or be considered as a a waiver or relinquishment by BISD, of the right to claim any exemptions, privileges, rights, defenses, or immunities, including without limitation any governmental or sovereign immunities or defenses from or to liability or prosecution, available to BISD or to its trustees, officers, employees, or agents under federal or Texas laws, including without limitation the Texas Constitution or the laws of the State of Texas.

32. **No Third-Party Beneficiaries; Successors and Assigns; No Assignment:** Neither the Agreement Documents, nor any term or provisions thereof, nor any inclusion by reference, shall be construed as being for the benefit of any party not in signatory thereto. No person, other than the Parties to this Agreement, is entitled to rely on any representation, warranty, covenant, or agreement contained herein.

BISD and Contractor, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other Party with respect to the terms and conditions of this Agreement.

This Agreement is a personal service contract for the services of Contractor, and neither this Agreement, nor Contractor's interest in this Agreement, nor any of Contractor's rights, duties, or obligations hereunder or fees due to Contractor hereunder may be assigned or delegated to a third party without the prior written approval of BISD. Any attempted assignment of this Agreement by Contractor shall be null and void. This Agreement may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Contractor without the prior written approval of BISD. The benefits and burdens of this Agreement are, however, assignable by BISD.

33. **Amendment:** This Agreement may not be supplemented, amended, changed, or otherwise modified except by a Valid Amendment, which requires an instrument in writing, to be attached to and incorporated in this Agreement in the form of either (1) a formal written amendment to the Agreement Documents signed and delivered by duly authorized representatives of both Parties hereto, or (2) a Change Order, issued by BISD or its authorized representative, as provided in Article 33.1. This Agreement may not be supplemented, amended, changed, or otherwise modified by conduct of either Party, custom, usage of trade, or course of dealing.

33.1 **Change Orders:** If BISD desires to increase the Scope of Work, the Parties will execute a written Change Order, signed by duly authorized representatives of both Parties hereto, increasing the Scope of Work and adjusting the Contract Sum and/or the Contract Time as mutually agreed by the Parties. In the event that BISD desires to reduce the Scope of Work, BISD may unilaterally issue a Change Order, signed only by a duly authorized representative of BISD, reducing the Scope of Work and making appropriate adjustments to the Contract Sum and/or the Contract Time, as determined by BISD in its sole discretion. If BISD issues a Change Order reducing the Scope of Work, Contractor is entitled to payment for the portion of the deleted Work actually performed, if any, prior to the effective date of the Change Order. The Parties agree that in no event shall any action or failure to act by BISD or Contractor constitute a waiver of requirements of this section, except as provided by Article 31.

In accordance with Texas Local Government Code § 271.060: (i) if the original Contract Sum is one-million dollars ($1,000,000.00) or more, the Contract Sum may not be increased by more than twenty-five percent (25%); and (ii) if the original Contract Sum is less than one-million dollars ($1,000,000.00) and a Change Order increases the Contract Sum to one-million dollars ($1,000,000.00) or more, then subsequent change orders may not increase the revised Contract Sum by more than twenty-five percent (25%). The original Contract Sum may not be decreased by more than twenty-five percent (25%) without the consent of Contractor.

34. **Attorneys' Fees:** The prevailing party in any adjudication relating to or arising out of this Agreement shall be awarded all reasonable and necessary attorneys' fees and costs.

35. **Entire Agreement:** The Agreement Documents constitute the complete, exclusive, integrated, and entire written expression of the intentions of the Parties hereto with respect to the Project and supersede all previous communications, representations, agreements, negotiations, promises, and statements, either oral or written, by and between either Party with respect to the Project. The Agreement Documents supersede any conflicting terms and conditions on any purchase or work orders, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Contractor after the Effective Date of this Agreement.

No supplements, retractions, amendments, modifications, or changes to this Agreement shall be valid unless they are Valid Amendments in accordance with Article 33. Any Valid Amendments to this Agreement must be in writing and signed by the required Party(ies) in accordance with Article 33. The Parties expressly agree that this Agreement shall not be construed against either Party.

36. **Governing Law and Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to its conflicts of law provisions. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be a court of competent jurisdiction in Jefferson County, Texas.

37. **Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

38. **Survival of Provisions:** All representations, warranties, covenants, indemnities, and other continuing obligations as expressly provided in this Agreement shall survive the expiration or earlier termination of this Agreement.

39. **Force Majeure:** Neither Party to this Agreement shall be liable for any failure or delay to perform the terms of this Agreement when such failure is due to Force Majeure (as defined in this Article), during the time and to the extent that the Party is prevented from performance by the Force Majeure event. The term "Force Majeure" as used in this Agreement shall mean any delay or default in performance hereunder due to causes beyond the control of the Parties and without their fault or negligence that could not have been prevented or avoided by the affected Party through the exercise of due diligence, including, but not limited to: acts of God, fire, strike, or lockout. In no event shall Force Majeure include rainout or ordinary weather days that require Work stoppage, equipment breakage, or routine scheduled equipment maintenance.

40. **Exhibits:** The following Exhibits (including Valid Amendments thereto) are attached hereto, as Agreement Documents, and fully incorporated herein by reference:

a) Exhibit A: Prevailing Wage Rates
b) Exhibit B: Construction Schedule

IN WITNESS WHEREOF the undersigned Parties hereto execute this Agreement as of the day and year indicated below. By signature hereon, Contractor certifies that no member of BISD's Board of Trustees has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.

BISD: Beaumont Independent School District
3395 Harrison Avenue
Beaumont Texas 77706

_____

By: Dr. Shannon Allen
Title: Superintendent
Date: _____

CONTRACTOR: **[INSERT CONTRACTOR NAME]**
[INSERT CONTRACTOR ADDRESS]

_____

By: _____
Title: _____
Date: _____

EXHIBIT A to Contractor Agreement
PREVAILING WAGE RATES

Contractor and Contractor's Subcontractors and Sub-Contractors shall comply with all applicable laws regarding prevailing wage rates including, but not limited to, Texas Government Code Chapter 2258 and any related federal requirements applicable to this Agreement, including the Davis-Bacon Act. **Contractor and Contractor's Subcontractors and Sub-subcontractors shall comply with all state and federal laws including, but not limited to, laws of labor, minimum wage, safety, and equal employment opportunity. Contractor and Contractor's Subcontractors and Sub-subcontractors must pay not less than the general prevailing wage rate as listed herein plus any applicable fringe benefits.**

The prevailing wage rates listed are to be considered the minimum to be paid, and the listing of prevailing wage rates shall not be construed to prohibit the payment of rates higher than those listed. The Contractor and Contractor's Subcontractor and Sub-subcontractors shall maintain an adequate workforce whether wage rates higher than those listed are required or not. BISD will not consider claims for additional compensation because of payments of wage rates in excess of the applicable rates listed herein.

Chapter 2258 of the Texas Government Code applies to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. Section 2258.021 mandates that a worker employed on a public work be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed and not less than the general prevailing wage rate of per diem wages for legal holiday and overtime work. A worker is employed on a public work if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with BISD.

Section 2258.023 of the Texas Government Code, entitled "PREVAILING WAGE RATES TO BE PAID BY CONTRACTOR AND SUBCONTRACTOR; PENALTY," states, in pertinent part:
(a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
(b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
(d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

Contractor certifies that it is in compliance with all applicable standards, laws, orders, and/or regulations regarding prevailing wage rates, labor, minimum wage, safety, and equal employment opportunity, including without limitation the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, 3146-3147), the regulations of the Department of Labor, 29 CFR Part 5, and Texas Government Code Chapter 2258.

Prevailing Wage Rate
Determination Information

The following information is from Chapter 2258 Texas Government Code:

Sec. 2258.021. Right to be Paid Prevailing Wage Rates.

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

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

(a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
(b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
(c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.
(d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
(e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

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

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

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

Prevailing Wage Rates – School Construction Trades

June 1, 2022

Texas Gulf Coast Area

CLASSIFICATION	2022 HOURLY RATE
ASBESTOS WORKER	$21.13
BRICKLAYER; MASON	$25.32
CARPENTER; CASEWORKER	$23.38
CARPET LAYER; FLOOR INSTALLER	$25.12
CONCRETE FINISHER	$23.40
DATA COMM/TELE COMM	$23.50
DRYWALL INSTALLER; CEILING INSTALLER	$26.65
ELECTRICIAN	$25.93
ELEVATOR MECHANIC	$28.80
FIREPROOFING INSTALLER	$22.25
GLAZIER	$22.30
HEAVY EQUIPMENT OPERATOR	$22.40
INSULATOR	$20.50
IRONWORKER	$25.50
LABORER, HELPER	$16.71
LATHERER; PLASTERER	$23.25
LIGHT EQUIPMENT OPERATOR	$20.50
METAL BUILDING ASSEMBLER	$21.10
MILLWRIGHT	$33.63
PAINTER; WALL COVERING INSTALLER	$19.60
PIPEFITTER	$26.97
PLUMBER	$26.71
ROOFER	$20.50
SHEET METAL WORKER	$19.90
SPRINKLER FITTER	$26.13
STEEL ERECTOR	$23.25
TERRAZZO WORKER	$23.50
TILE SETTER	$19.58
WATERPROOFER; CAULKER	$19.88

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

Prevailing Wage Rates

Worker Classification Definition Sheet

CLASSIFICATION	DEFINITION
ASBESTOS WORKER	Worker who removes and disposes of asbestos materials.
BRICKLAYER; MASON	Craftsman who works with masonry products, stone, brick, block, or any material substituting those materials and accessories.
CARPENTER; CASEWORKER	Worker who build wood structures or structures of any material which has replaces wood. Includes rough and 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/TELE COMM	Worker who installs data/telephone and television cable and associate equipment and accessories.
DRYWALL; CEILING INSTALLER	Worker who installs metal framed walls and ceiling, drywall coverings, ceiling grids, and ceilings.
ELECTRICIAN	Skilled craftsman who installs or repairs electrical wiring and devices. Includes fire alarm systems and HVAC electrical controls.
ELEVATOR MECHANIC	Craftsman skilled in the installation and maintenance of elevators.
FIREPROOFING 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-hoes, back-fillers, power operated shovels, winch trucks, and all trenching machines.
INSULATOR	Worker who applies, sprays, or installs insulation.
IRONWORKER	Skilled craftsman who erects structural steel framing, and installs structural concrete Rebar.
LABORER, HELPER	Worker qualified for only unskilled or semi-skilled work. Lifting, carrying materials or tools, hauling, digging, clean up.
LATHERER; PLASTERER	Worker who installs metal framing and lath. Worker who applies plaster to lathing and installs associated accessories.
LIGHT EQUIPMENT OPERATOR	Includes but not limited to , air compressors, truck crane drivers, flex planes, building elevators, form graders, concrete mixers less than 14cf), conveyers.
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, and align pumps.
PAINTER; WALL COVERING INSTALLER	Worker who prepares wall surfaces and applies paint and/or wall coverings, tape, and bedding.
PIPEFITTER	Trained worker who installs piping systems, chilled water piping and hot water (boiler) piping, pneumatic tubing controls, chillers, boilers, and associated mechanical equipment.
PLUMBER	Skilled craftsman who installs domestic hot and cold water piping, waste piping, storm system piping, water closets, sinks, urinals, and related work.
ROOFER	Worker who installs roofing materials, Bitumen (asphalt and coal tar) felts, flashings, all types of roofing membranes, and associated products.
SHEET METAL WORKER	Worker who installs sheet metal products, Roof metal, flashings and curbs, ductwork, mechanical equipment, and associated metals.
SPRINKLER FITTER	Worker who installs fire sprinklers systems and fire protectant equipment.
STEEL ERECTOR	Worker who erects and dismantles structural steel frames of buildings and other structures.
TERRAZZO WORKER	Craftsman who places and finishes Terrazzo
TILE SETTER	Worker who prepares wall and/or floor surfaces and applies ceramic tiles to these surfaces.
WATERPROOFER; CAULKER	Worker who applies water proofing material to buildings. Products include sealant, caulk, sheet membranes, and liquid membranes, sprayed, rolled or brushed.

EXHIBIT B to Contractor Agreement
CONSTRUCTION SCHEDULE

1. Begin Construction: Estimated February 26, 2024
2. Substantial Completion: Estimated August 1, 2024
3. Final Completion: **[INSERT]**

The Fire Alarm System Replacement Project plays a pivotal role in ensuring a secure environment for our students, and any delays in its completion pose potential risks to their safety. It is imperative that this project is prioritized.

The Construction Schedule above includes an allowance of Anticipated Weather Days, which are regular working days, in accordance with the following schedule:

January	3	July	4
February	4	August	4
March	4	September	4
April	2	October	3
May	5	November	5
June	6	December	4

Weather Days shall be defined as days on which weather events (such as rain, flooding, snow, unusually high winds, excessively wet grounds, and the like) prevent progress on items which affect the critical path of the Work on regular working days only. In order for a Weather Day to be allowed for rain-related reasons, the rain at the Project Site must have been in excess of .50 (1/2) inch in 24 hours.

If the number of actual Weather Days exceeds the number of Anticipated Weather Days included in the Contract Time, and if the additional Weather Days prevent the Contractor from performing the critical path of the scheduled Work, a change to the Contract Time may be made in accordance with Article 33 in this Agreement.