



**COMMUNITY INDEPENDENT SCHOOL DISTRICT
REQUEST FOR PROPOSALS RFP #27-001
OWNER'S REPRESENTATIVE/CONSTRUCTION CONSULTANT SERVICES**

The Community Independent School District ("CISD" or "District") is soliciting proposals from qualified and interested persons or entities for Owner's Representative/Construction Consultant Services for Community ISD's construction projects.

Sealed submittals must be addressed to the District at the address below and marked as follows:

**RFP #27-001
OWNER'S REPRESENTATIVE/CONSTRUCTION CONSULTANT SERVICES**

DUE NO LATER THAN 2:00 P.M. Central Time on August 20, 2026

Community ISD
Attn: Jennifer Aldridge, Lead Purchasing Specialist
611 North FM 1138
Nevada, Texas 75173

ANY SUBMITTAL RECEIVED AFTER THE TIME AND DATE STATED ABOVE WILL NOT BE CONSIDERED. UNSIGNED SUBMITTALS AND/OR SUBMITTALS RECEIVED VIA FACSIMILE OR EMAIL WILL NOT BE CONSIDERED. ALL RESPONSES MUST BE RECEIVED AT THE ADDRESS SHOWN ABOVE. RESPONSES SENT/DELIVERED TO ANY OTHER DISTRICT ADDRESS WILL NOT BE CONSIDERED.

FAILURE TO COMPLY WITH SPECIFICATIONS MAY RESULT IN THE DISQUALIFICATION OF YOUR SUBMITTAL.

I. REQUEST FOR PROPOSALS

A. PROPOSALS

The Community Independent School District (“CISD”, “Community ISD”, “Owner” or “District”), is seeking proposals for Construction Consultant Services in connection with Community ISD’s construction projects.

B. FORM OF AGREEMENT

The form of agreement shall be the Agreement Between Owner and Owner’s Representative/Construction Consultant, attached as **Exhibit A**. The District will consider proposed changes to the form of Agreement submitted in writing with the Proposal; however, the District reserves the right to reject any proposed changes that materially change the terms of the Agreement.

C. PROPOSED SCHEDULE

PROPOSAL TIMING

Release RFP	Jul 23, 2026
Advertise RFP	Jul 30, 2026
	Aug 6, 2026
Questions concerning RFP due	Aug 7, 2026
Response to questions received	Aug 12, 2026
Proposals due to the District	Aug 20, 2026
Scheduled Interviews (if applicable)	Week of August 31, 2026
Approval by Board of Trustees	Sep 21, 2026

II. SCOPE OF SERVICES

Community ISD is seeking assistance from qualified and interested persons or entities for Construction Consultant Services. The request for proposals provides a list of the types of services that may be provided; however, Community ISD asks proposers to outline their proposed scope of work. Community ISD does not require proposers to be an architect or engineer or to have an architect or engineer as part of their team. Instead, Community ISD’s main focus is on proposers who have experience in school district construction and can assist the Administration and Board of Trustees with general project management, project controls, adherence to project schedules, budget, and project reporting status. *(Please note that this procurement is not for a Construction-Manager Agent, Construction Manager at Risk, or General Contractor.).*

In addition to ongoing construction projects, the District anticipates having projects of various size and complexity, in addition to the assignment of various new and maintenance/repair construction-related contracts including the management of job order contracts as necessary. Certain information regarding the District’s construction projects may be found on the District’s website: <https://www.communityisd.org/departments/construction-and-design/departments/construction-and-design/construction-and-design-home-page>. The following is a non-exclusive list of ongoing and upcoming construction projects:

- Community High School Additions - In Progress
- Edge Middle School Additions and Renovations - In Progress
- Transportation Parking Lot Expansion - Future Project
- Elementary #6 - Future Project

The District requires services to help manage and administer capital improvements projects and long-term facilities construction, maintenance and renovation projects. Thus, the District desires to retain a highly qualified person or entity for management of capital construction, renovation and maintenance projects. The selected person or entity must provide project leadership, project management, project controls, adherence to project schedule, adherence to project budget, and project reporting status. Community ISD asks proposers to submit their proposed scope of work based on their experience on the needs of projects similar to those described herein.

Because the Owner's Representative/Construction Consultant will be tasked with tracking, monitoring, and evaluating multiple aspects of the projects, the Owner's Representative/Construction Consultant must have a thorough understanding of a broad range of technical, administrative, and contractual issues as well as an effective communication style.

The selected Owner's Representative/Construction Consultant will review, in conjunction with the District's Architect, the Construction Manager's development of its detailed construction schedule and recommend acceptance or revision. The selected Owner's Representative/Construction Consultant will represent the Owner at regular project meetings.

The selected Owner's Representative/Construction Consultant will review, in conjunction with the District's Architect, the progress of construction with the Construction Manager/General Contractor, observe work in place and properly stored materials on a monthly or as needed basis, and evaluate the percentage completion of each construction activity as indicated in the application for payment's schedule of values. This will serve as data for input to the monthly update report which will be prepared and distributed to the Owner, the Construction Manager/General Contractor, the Architect and other appropriate parties. This report will reflect the progress, will be the basis for the monthly progress payment and will indicate to the Owner when notices for acceleration of the Work and other Owner prerogatives are appropriate.

III. TERM OF CONTRACT

It is anticipated that the contract term for contract(s) awarded from this solicitation, if any, will be for an initial term of one (1) year, with the option to extend for up to three (3) additional one-year terms upon the mutual agreement of both parties. Further, the District reserves the right to extend the contract term on a month-to-month basis, not to exceed six (6) months, upon the expirations of the initial term or any extensions, if exercised.

IV. INTERVIEWS/PRESENTATIONS

The District may request an interview and/or presentation by respondents. If requested by CISD, such interviews/presentations may take place the week of August 31, 2026.

V. PROPOSAL REQUIREMENTS

Respondent's proposal shall include the following items in the following sequence:

- A. EXECUTIVE SUMMARY: The summary shall highlight the key strengths of the proposal. Limit to two (2) pages.
- B. RESPONDENT QUALIFICATION GENERAL QUESTIONNAIRE: Complete and submit the Respondent Qualification General Questionnaire, **RFP Attachment A.**
- C. FELONY CONVICTION NOTIFICATION: Complete, sign and submit the Felony Conviction Notification Form, **RFP Attachment B.**
- D. ACKNOWLEDGMENT FORM - NON-COLLUSION STATEMENT: Complete and submit the Acknowledgment Form – Non-Collusion Statement, **RFP Attachment C.**
- E. CERTIFICATE OF INSURANCE: Submit a copy of your certificate of insurance for the types of coverages and at the levels specified in **RFP Attachment D.**, if awarded a contract in response to this RFP.
- F. SIGNATURE PAGE: Complete, sign and submit Signature Page, **RFP Attachment E.** The Signature Page must be signed by a person, or persons, authorized to bind the person, entity, or entities, submitting the proposal. Proposals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority.
- G. CONFLICT OF INTEREST CIQ FORM: Respondents must also complete and submit the conflict of interest questionnaire form, which is available from the Texas Ethics Commission at <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>.
- H. CERTIFICATE OF INTERESTED PARTIES- FORM 1295: A business entity entering into a contract with CISD is required by the Texas Government Code §2252.908, to complete Form 1295 "Certificate of Interested Parties" located at <https://www.ethics.state.tx.us/filinginfo/1295/>. Once the online submission has been processed and a certification number has been issued, the form must be printed with the certification number, then signed and submitted along with the proposal.

Respondents are expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THE ABOVE ITEMS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

VI. AMENDMENTS TO THE RFP

Changes, amendments, or written responses to questions received regarding this RFP may be posted on the District's website at: <https://www.communityisd.org/departments/financial-services/current-bids>. It is the Respondent's responsibility to review this website and ascertain whether any amendments have been made prior to submission of a proposal. A respondent, who does not have access to the internet, must notify the District if the Respondent wishes to receive copies of amendments to this RFP by mail. 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.

VII. SUBMISSION OF PROPOSALS

A. Respondents shall submit FIVE (5) copies of the proposal: (1) original, signed in blue ink, two (4) copies), and ONE (1) USB flash drive. Submit in a sealed package, clearly marked on the front of the package as listed above.

All proposals must be received **no later than the time and date indicated above**. Proposals submitted prior to the above time and date may be modified provided such modifications are sealed and received prior to the time and date set for submission of proposals. Any proposal or modification received after this time shall not be considered. Proposals sent by facsimile or email will not be accepted.

B. Proposals shall correctly state the true and correct name of the individual, proprietorship, corporation, and/or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the proposal.

C. All provisions in Respondent's proposal, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions.

D. All proposals become the property of the District upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the District cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a court order. A Respondent including information it considers confidential in its proposal is encouraged to consult its attorney regarding protection of this information.

E. Any cost or expense incurred by the Respondent that is associated with the preparation of the proposal, the interview/presentation, if any, or during any phase of the selection process, shall be borne solely by Respondent.

VIII. RESTRICTIONS ON COMMUNICATION

The Respondent, or any agent or representative of respondent shall not undertake any activities or actions to promote or advertise their qualifications or proposal to any member of the CISD Board of Trustees, the CISD Administration or their respective staff persons, except as specifically requested in writing by CISD, at any time between the date of submission of the RFP and the date of award of a contract by the CISD 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 proposal submitted by Respondents.

A. Questions concerning this RFP shall be directed, in writing to Nathan Heflin, Assistant Superintendent of Finance and Operations, by email at nathan.heflin@communityisd.org or by mail at the address indicated above. Verbal questions and explanations are not permitted other than as described by this section and during interviews, if any. No inquiries or questions regarding this RFP will be

answered if received after **2:00 pm local time on August 7, 2026**, to allow ample time for distribution of responses and/or amendments to this RFP.

B. The District 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 the District.

C. Violation of this provision by Respondent or Respondent's agent(s) may lead to disqualification of Respondent's proposal from consideration.

IX. EVALUATION

A. The District will conduct an evaluation of all proposals received in response to this RFP. The District may appoint a selection committee to perform the evaluation. The District may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The District reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the Board of Trustees of the District.

B. The District reserves the right to conduct all research it deems necessary as part of its evaluation of Respondents which may include contacting their previous clients.

C. This RFP will be conducted pursuant to Texas Education Code Section 44.031. The District will use these criteria to award in the best interest of the District to the Respondent providing the best value to the District.

Pursuant to Texas Education Code 44.031, the District will consider and evaluate the following criteria based on the weighted values below:

Criteria	Points
1. Price and total long-term cost to the District to acquire the services	40
2. Reputation of the Respondent a. Respondent's Past Performance and Experience on Past Projects	15
3. Quality of the Respondent's Services a. Experience and Qualifications of Respondent and Key Personnel Proposed for the Project b. Respondent's Past Relationship with the District (if any)	15
4. Extent to Which the Services Meet the District's Needs	15
5. Communication and Oral/Visual Skills (based on interview/presentation, if any; please note that certain questions may affect the scoring of the other categories although overall presentation skills may be considered under this criteria)	15
TOTAL POINTS	100

By submitting a proposal, the Respondent agrees to the above criteria and methodology.

X. AWARD OF CONTRACT AND RESERVATION OF RIGHTS.

A. The District reserves the right to award one, more than one, or no contract(s) in response to this RFP.

B. The contract, if awarded, will be awarded to the Respondent whose proposal is deemed to provide the best value to the District.

07.

C. The District reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. The District also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.

D. Receipt of response by the CISD or submission of a response to the CISD or selection of a Submitter for the purposes of negotiating a contract; confers no rights to the Submitter, nor obligates the CISD in any manner.

E. If selected, Respondent will be required to comply with the following Insurance and Indemnification Requirements below:

a. Insurance: Respondent represents and agrees that it shall provide and maintain certain insurance as required by CISD, which may include, but not limited to, general liability, automobile liability, and workers' compensation insurance. Such insurance shall be written for not less than the limits set out in the form of agreement attached hereto in **Exhibit A**, and also provided in **RFP ATTACHMENT D**. Prior to the execution of the agreement, Respondent shall provide to CISD original certificates of insurance indicating proof of any such required insurance. Respondents shall ensure that CISD will receive written notice at least thirty (30) days in advance of the effective dates of any reduction, modification, cancellation or termination of such insurance policies. CISD shall be listed as an additional insured on all policies except workers' compensation.

b. Indemnification. The Agreement contains an indemnification provision as set out in the form of agreement attached hereto in **Exhibit A**. Respondents are encouraged to thoroughly review the form of agreement.

G. Conflicts of Interest. Respondent acknowledges that it is informed that District Policy and Chapter 176 of the Texas Local Government Code require that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the District, shall file a completed conflict of interest questionnaire with the appropriate District records administrator not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with the District; or (2) submits to the District an application, response to a request for qualifications, proposals or bids, correspondence, or another writing related to a potential agreement with the District. The conflict of interest questionnaire form is available from the Texas Ethics Commission at <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>. *Completed conflict of interest questionnaires may be mailed or delivered by hand at the address indicated on page 1.* Please consult your own legal counsel if you have questions regarding the statute or form. This form must be completed.

H. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services shall be deemed to be independent contractor(s), responsible for their respective acts or omissions, and that District shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

I. Criminal Background Checks. Respondent agrees to comply with any District requirements for criminal history background checks for all employees and subcontractors.

RFP ATTACHMENT A

**COMMUNITY INDEPENDENT SCHOOL DISTRICT
PROPOSAL – CONSTRUCTION CONSULTANT SERVICES**

**RESPONDENT QUALIFICATION
GENERAL QUESTIONNAIRE**

(Restate each question as written & provide response.)

GENERAL INFORMATION

1. **Company Information:** Provide the following information regarding your company. If your firm has more than one office location, please provide information for the office that will manage the project.

Name/Name of Agency/Company: _____
(Legal name of the company as registered with the Secretary of State of Texas)

Type of Operation: _____
(Individual, Partnership, Corporation, Joint Venture, etc.)

Address _____

State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Taxpayer Identification Number: _____

2. **Contact Information:** List the person who the District may contact concerning your proposal or setting dates for meetings.

Name: _____

Address: _____

State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

3. Provide the year the firm was established and any other names or change in ownership under which your business has operated within the last ten (10) years.

CRITERIA 1: PRICE

4. Please provide a proposed fee for the services, which fee shall cover all of the staff and resources

necessary to discharge the services described in the attached Form of Agreement. Proposers' proposed fee may be a fixed fee and/or based on hourly rates.

CRITERIA 2: REPUTATION OF RESPONDENT

5. Identify the two (2) most significant school district clients, if any, the Company has provided comparable services to within the past five (5) years. Provide the following information for each project listed:
- Project name, location
 - Project size, cost (design budget vs. completed project cost with any reasoning regarding variance)
 - Project overview/description including any unique design characteristics
 - Description of services Respondent provided for the project
 - Name of individual responsible to the Client for the overall success of the project
 - Name of the Project Planner/Manager, if different than above (individual responsible for coordinating the day to day work)
 - The Client's name and contact information as a reference. References shall be considered relevant based on specific project participation and experience with the Respondent.

Please note that Community ISD representatives may contact references listed above as part of this RFP process.

6. Identify the two (2) most significant non-school district clients, if any, the Company has provided comparable services to within the past five (5) years. Provide the following information for each project listed:
- Project name, location
 - Project size, cost (design budget vs. completed project cost with any reasoning regarding variance)
 - Project overview/description including any unique design characteristics
 - Description of services Respondent provided for the project
 - Name of individual responsible to the Client for the overall success of the project
 - Name of the Project Planner/Manager, if different than above (individual responsible for coordinating the day to day work)
 - The Client's name and contact information as a reference. References shall be considered relevant based on specific project participation and experience with the Respondent.

Please note that Community ISD representatives may contact references listed above as part of this RFP process.

7. Has the Company provided services for Community ISD within the last ten (10) years? If so, indicate if type of services provided, when it was provided, and identify the District department for which the work was performed.
8. Is your firm pending, currently, or within the past three (3) years been involved in litigation or claims field against your company because of the services rendered.

Yes ☐ No ☐

- a. If you answered yes, specify date(s), details, circumstances, and resolution.

CRITERIA 3: QUALITY

9. Does your Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its proposal?

Yes ☐ No ☐

10. Is your Company authorized and/or licensed to do business in Texas?

Yes ☐ No ☐

11. Has the Company or any of its principals been debarred or suspended from contracting with any public entity?

Yes ☐ No ☐

12. If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

13. Has the Company or any of its principals had a bond or surety canceled or forfeited in the last ten (10) years?

Yes ☐ No ☐

- a. If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

14. Bankruptcy Information. Has the Company or any of its principals ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes ☐ No ☐

- a. If you answered yes, state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

15. Is your firm currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity?

Yes ☐ No ☐

- a. If you answered yes, specify date(s), details, circumstances, and resolution.

16. Provide a Staffing Plan proposed to provide the services requested in this RFP. Indicate if any persons will dedicate 100% of their time to the District and, if so, identify them by position and title. For each team member proposed, provide the following information:

- a. Resume with an overview of roles and responsibilities on the project, as well as degrees held,

- registrations, memberships, and years with the firm.
- b. List of personnel experience (and include specifically any experience in the K-12 educational market.)
- c. Organizational Chart indicating all personnel assigned to the project and whether full time or part time involvement on the proposed project team.

CRITERIA 4: EXTENT MEETS COMMUNITY ISD NEEDS

- 17. Provide a statement of interest including a narrative describing the Respondent's unique qualifications as they pertain to these services.
- 18. Describe how you plan to ensure continuity of project objectives starting with design development, moving through construction documents, and finishing with a constructed project that meets the District's requirements
- 19. Provide a description of an instance, if any, where your involvement in a project in the role of Owner's Representative/Construction Consultant resulted in savings for your client.
- 20. Please review the Form of Agreement attached in RFP **Exhibit A**. Respondent will be deemed to have accepted the terms of the agreement and should submit a proposal based on the Agreement. Please list any requested modifications or revisions to the Agreement. Those modifications or revisions may not be accepted but will be considered. Any agreement is subject to legal counsel review and final approval by the Board of Trustees.

CRITERIA 5: COMMUNICATION AND ORAL/VISUAL SKILLS

Respondents may be required to schedule an interview/presentation time for this RFP.

At a minimum, if a presentation is requested, Respondents should provide a presentation that includes a response to the following:

- 21. Provide your organization's approach to communications with the Administration and the Board and the specific points where you believe direct and effective communication by the Owner's Representative/Construction Consultant with the Board of Trustees would be important in connection with resolution of the current issues and regarding the projects overall.
- 22. In your role as Owner's Representative/Construction Consultant, what would be your overall approach to project administration and explain how this approach will benefit the District, including information regarding the following:
 - a. Your standard practices with regard to keeping the District's Board informed of the status of the project schedule, budgetary challenges, change orders, on-site observations, coordination efficiencies, etc.
 - b. Specific practices that you normally implement to assure good communication with District's project staff involved in the day to day progress of a Project and the Board.
 - c. Provide your methods for record keeping on a Project, or your review procedures to assure proper record keeping by the Construction Manager/General Contractor and Architect during construction, including items such as review and routing of change order

documentation, contingency expenditures, and logging project progress, changes, and coordination of the flow of information among project participants.

23. Provide any additional information regarding proposed plans to supply the services requested by this RFP that you wish for the District to consider in its evaluation.

The District may also ask specific questions or ask for clarification at an interview/presentation that are not included here.

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RFP ATTACHMENT B.

**COMMUNITY INDEPENDENT SCHOOL DISTRICT
PROPOSAL – CONSTRUCTION CONSULTANT SERVICES**

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 district must give advance notice to the district 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 district may terminate a contract with a person or business entity if the district 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 district 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 firm 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) _____

☐ a. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable: Signature of Company Official: _____

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

☐ c. My firm 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: _____

RFP ATTACHMENT C.

**COMMUNITY INDEPENDENT SCHOOL DISTRICT
PROPOSAL - CONSTRUCTION CONSULTANT SERVICES**

ACKNOWLEDGMENT FORM - NON-COLLUSION STATEMENT

The undersigned affirms that they are duly authorized to execute this submittal, that this company, corporation, firm, partnership or individual has not prepared this proposal in collusion with any other proposer, and that the contents of this proposal as to prices, terms or conditions of said proposal 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 proposal.

Vendor: _____

Address: _____

Phone: _____ Fax: _____

Respondent (Signature): _____

Respondent (Print Name) _____

Title/Position with Company: _____

Date: _____

RFP ATTACHMENT D.

**COMMUNITY INDEPENDENT SCHOOL DISTRICT
PROPOSAL - CONSTRUCTION CONSULTANT SERVICES**

INSURANCE REQUIREMENTS

The Owner's Representative/Construction Consultant shall provide and maintain in effect during the performance of the services under the Agreement insurance of the following types and with indemnification limits not less than the amounts indicated:

Worker's Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Owner's Representative/Construction Consultant's employment of workers and anyone for whom Owner's Representative/Construction Consultant shall be liable for Worker's Compensation claims. \$1,000,000.00 Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
Employers Liability	\$1,000,000.00 per accident \$1,000,000.00 per disease policy limit \$1,000,000.00 per disease per employee
Commercial General Liability: • Each Occurrence • General Aggregate • Personal Injury • Products - Completed Operations hazard, providing coverage for claims including: 1. damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person; 2. personal and advertising injury; 3. damages because of physical damage to or destruction of tangible property, including the loss of use of such property; 4. bodily injury or property damage arising out of completed operations; and 5. the Owner's Representative/Construction Consultant's indemnity obligations provided for in the contract	\$1,000,000.00 \$2,000,000.00 \$1,000,000.00 each person \$1,000,000.00 aggregate
Automobile Liability	\$1,000,000.00 combined single limit Coverage shall be for all owned, non-owned and hired motor vehicles, and any other statutorily required automobile coverage.

The Proposer is also directed to review Article 5.4 of the attached Form of Agreement regarding insurance.

RFP ATTACHMENT E.

**COMMUNITY INDEPENDENT SCHOOL DISTRICT
PROPOSAL - CONSTRUCTION CONSULTANT SERVICES**

SIGNATURE PAGE AND DECLARATION OF COMPLIANCE

Check (✓) the box that indicates 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 Proposal 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 Proposal 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: _____

Date: _____

By: _____

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

Printed Name: _____

Title: _____

Date: _____

By signing this Signature Page and Declaration of Compliance, I do hereby declare that I have read the Request for Proposal on which our Proposal 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 proposal, I further certify on behalf of my organization and represent to the Community Independent School District ("District") 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 proposal; 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 recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this proposal; 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 District concerning this proposal 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 proposal; 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 District in return for the person having exercised the person's official discretion, power or duty with respect to this proposal; 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 District in connection with information regarding this proposal, the submission of this proposal, the award of this proposal or the performance, delivery or sale pursuant to this proposal.

By submitting this form, I also confirm that I have received the following Addenda (list below if any):

RFP EXHIBIT A

Proposed Form of Agreement

This page is intentionally blank. See form of agreement on the following pages.

DRAFT FOR PROCUREMENT ONLY
NOT FOR EXECUTION AT THIS TIME

**OWNER'S THIRD-PARTY REPRESENTATIVE AGREEMENT
FOR CONSTRUCTION CONSULTANT SERVICES
FOR COMMUNITY ISD BOND PROJECTS**

THIS OWNER'S THIRD-PARTY REPRESENTATIVE AGREEMENT FOR CONSTRUCTION CONSULTANT SERVICES ("Agreement") is effective as of the date of the last signature by an authorized representative for both parties, (the "Effective Date") by and between the **COMMUNITY INDEPENDENT SCHOOL DISTRICT**, an public school district and political subdivision of the State of Texas with administrative offices located at 611 North FM 1138, Nevada, Texas 75173, ("Owner" or "District"), and **[INSERT NAME]**, a _____ with offices at _____ ("Owner's Representative").

BACKGROUND

A. The Owner has multiple ongoing and future construction projects at various stages of planning, design and construction, which includes, but is not limited to, the projects listed in **Exhibit A**, attached hereto and incorporated herein by reference (the "Capital Improvement Projects").

B. The Owner desires the services of the Owner's Representative, which has special expertise and experience in design consultation, value engineering, construction scheduling, budget development and oversight, scope development, cost estimating, cost control, quality control, construction phasing and logistics; administration of construction manager-at-risk projects and general contractor led construction projects; performance monitoring; oversight of commissioning process, initial start-up and testing of systems; closeout of construction projects and oversight of warranty work.

C. The Owner desires to retain the Owner's Representative to provide comprehensive services in the organization, coordination, management and administration required for all aspects of the development of the Capital Improvement Projects as described herein and in **Exhibit B** in greater detail.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the Owner and the Owner's Representative agree as follows:

AGREEMENT

1. **Term of Agreement.** This Agreement is effective on the Effective Date and shall remain in effect until [date to be inserted] (the "Term"). Owner's Representative shall have a continuing obligation, after the Term, to comply with any provision of this Agreement intended for Owner's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Agreement. **OWNER'S REPRESENTATIVE UNDERSTANDS THAT NO WORK SHOULD BEGIN UNDER THIS AGREEMENT UNTIL ALL REQUIRED SIGNATURES ON THIS AGREEMENT HAVE BEEN OBTAINED. ANY WORK PERFORMED BY OWNER'S REPRESENTATIVE PRIOR TO SUCH TIME SHALL BE CONSIDERED AS HAVING BEEN PERFORMED AT OWNER'S REPRESENTATIVE'S OWN RISK AND AS A VOLUNTEER.**

2. **Scope of Services.**

2.1. Owner retains the Owner's Representative to provide sufficient organization, personnel and management to perform the services specified in **Exhibit B** of this Agreement (the "Scope of Services") in an expeditious and economical manner at the highest standards of Owner's Representative's profession or business to further the Owner's interests and to act solely in the District's interest in performing all its services including providing independent consultation, explanation, evaluation and feedback to the Superintendent and the Board regarding the design and scope of the projects, budget adjustments, proposed changes, schedule changes, time extensions, and resolution of problems or questions that arise, while working in full cooperation with the District's architects who are providing design services on multiple projects. The Owner's Representative shall furnish all labor, services, supplies, materials and equipment required to complete the

Scope of Work using Owner's Representative's best efforts, skill, judgment, and abilities in accordance with this Agreement or if any member of the Owner Representative's Team is assigned to any Project task. The Owner's Representative accepts a fiduciary relationship of trust and confidence established between it and the Owner by this Agreement.

2.2. If required, Owner's Representative shall provide a project team that shall have sufficient capacity, skill and experience to perform the Work ("Owner Representative's Team"). Owner's Representative may not, without the written consent of Owner, reassign or replace any member of the Owner's Representative Team. If a member of Owner's Representative's Team resigns, any replacement shall be subject to Owner's approval. The initial Owner's Representative Project Team identified in Exhibit C, is approved by Owner. Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.0834, the Owner's Representative agrees, that prior to commencement of work under this Agreement, using the form promulgated by the District or such other form approved by the District, Owner's Representative's will arrange with the District to provide all information needed by the District to obtain any national criminal history record information ("CHRI") required pursuant to Texas Education Code, Section 22.0834 (the "Statute") on all of Owner's Representative's project team, employees, independent contractors, agents, or Subcontractors, Owner's Representative's subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined by the Statute, i.e. the person has or will have continuing duties related to the contracted for services, and said person has or will have the opportunity for direct contact with students in connection with those continuing duties and shall reimburse the District for the costs and expenses associated with obtaining the criminal history information.

Any Covered Employee that has a disqualifying criminal history shall be disqualified and prohibited from performing any contract duties or services and neither the Owner's Representative nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a disqualifying criminal history, Owner's Representative will exclude that person from assignment to District facilities. Owner's Representative understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the District as to whether the Covered Employee must be excluded from the Project. If any member of the Project Team is excluded based on their disqualifying criminal history, then they may not serve as a member of the Project Team.

2.3. Owner's Representative shall perform the Work in compliance with all applicable federal, state and local laws, regulations, and codes, including the applicable school facilities standards in 19 Texas Administrative Code Sections 61.1031 and 61.1040, including without limitation the Owner's policies, procedures and Owner's other applicable standards as provided by Owner ("Laws"). Owner's Representative shall maintain and shall require that its subcontractors, if any, maintain any and all required governmental licenses, certificates, approvals, and permits that are required of the Owner's Representative for the performance of the Work. The Owner's Representative agrees to maintain in full force and effect such required licenses, certificates, approvals, and permits throughout the Term.

2.4. Owner's Representative has or will perform the Scope of Services in cooperation with the Owner and the Owner's "Project Team". The Project Team includes the Owner's "Architect", which means (as appropriate to the context) the design architect, the architect or engineer who prepares the plans and specifications, the inspecting architect, or such other design and design-related consultants as may be appropriate; the "Contractor", which means the General Contractor or Construction Manager-At-Risk ("CMAR") with whom the Owner has contracted to construct any portion of the Projects and the General Contractor's or CMAR's subcontractors, suppliers, and materialmen; and "Consultants", which means such other consultants that perform consulting services for the Project, including without limitation, testing laboratories and surveyors. Nothing contained in this Agreement shall create any obligation or contractual relationship between the Owner's Representative and any third party, including without limitation any other member of the Project Team.

2.5. Owner may modify the Scope of Services without invalidating this Agreement. To avoid delay in the Project, upon receipt of an Owner-requested change in the Scope of Services, the Owner's Representative shall promptly proceed with the change in Scope of Services. If the Owner's Representative

believes it is entitled to additional compensation for the change in Work, the Owner's Representative shall promptly notify the Owner in writing. Any change in Owner's Representative's compensation shall be made by a written agreement signed by both Parties.

3. Owner's Responsibilities.

3.1. The Owner shall provide information regarding its design and construction requirements for the Project to the Owner's Representative, with reasonable promptness.

3.2. The Owner shall designate an individual who shall have the authority to render decisions on Owner's behalf ("Owner's Contact"). The Owner may change Owner's Contact from time to time by written notice to the Owner's Representative. The initial Owner's Contact shall be the District's Superintendent of Schools.

4. Compensation and Terms of Payment.

4.1. The consideration for all Work performed or supplied by Owner's Representative under this Agreement shall be paid by Owner is as follows:

[insert payment terms] – **DRAFT FOR PROCUREMENT ONLY**

4.2. **Subcontractor's Payment.** If Owner's Representative engages any subcontractors or subconsultants to perform any of the Scope of Services, Owner's Representative shall not markup work performed by its subcontractors. Owner's Representative shall pay any such subcontractor or subconsultant within ten days (or such shorter period as required by law) of the Owner's Representative's receipt of payment from the Owner for services provided by the subcontractor or subconsultant. Owner's Representative shall pay interest of at the rate provided in the Texas Prompt Payment Act, Local Government Code Chapter 2251, to the subcontractor or subconsultant on undisputed amounts not paid on time to the subcontractor or subconsultant.

4.3. Reimbursable Expenses (if applicable).

4.3.1 Reimbursable expenses may include the following ordinary, necessary, and reasonable expenses incurred by the Owner's Representative and its subcontractors and/or subconsultants related to the Work, if approved by Owner in advance:

- .1 Owner-authorized out-of-town travel and subsistence cost payable in accordance with the travel reimbursement policies applicable to employees of the Owner;
- .2 Dedicated data and communication services, Project Web sites, and extranets;
- .3 Owner-requested printing, reproductions, plots and standard form documents;
- .4 Postage, handling and delivery of Instruments of Service as requested by the Owner; and
- .5 Renderings, models, mockups, professional photography if requested by the Owner.

4.3.2. All reimbursement expenses shall be at the actual expense incurred by the Owner's Representative and its subcontractors and/or subconsultants without markup.

4.3.3. If expenses are reimbursable, each request for reimbursement must be itemized and accompanied by receipts.

4.3.4. No reimbursable expenses shall be allowed without Owner's prior written consent during the Term.

4.4. Frequency of Invoicing and Terms of Payment.

4.4.1 Owner's Representative shall submit invoices monthly, describing in reasonable detail the services (and goods, if any) provided in the preceding month including time spent on various tasks. Services (and goods, if any) shall be separately billed by Project. Payment of undisputed amounts due shall be made by Owner not later than 31 days after Owner's receipt of an invoice and acceptance of services rendered under this Agreement.

4.4.2 Notwithstanding anything to the contrary in this Agreement, the Owner may withhold payment to the Owner's Representative hereunder if and for so long as the Owner finds any of the Owner's Representative's services to be defective, untimely, unsatisfactory or Owner's Representative otherwise fails to perform any of its obligations or otherwise is in default; provided, however, that any such withholding shall be limited to an amount sufficient in Owner's reasonable opinion to cure any such default or failure of performance by Owner's Representative.

4.5. **Final Payment.** Final payment shall not be due to Owner's Representative until Owner's Representative submits to Owner the following in such form as may be required by Owner: (a) a statement identifying all subcontractors and/or subconsultants who have performed all or a portion of the Scope of Services, whether the subcontractors and/or subconsultants have been paid for their services, and if not, what the unpaid amount owed or allegedly owed to each subcontractor; and (b) data or other documentation establishing payment or satisfaction of Owner's Representative's obligations arising out of this Agreement, such as receipts or releases and waivers of liens, claims, security interests or encumbrances. If a subcontractor refuses to furnish a release or waiver required by the Owner, Owner's Representative may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after final payment is made, Owner's Representative shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Owner's Representative warrants that upon submittal of an invoice, to the best of Owner's Representative's knowledge, information and belief, all work included in the Work shall be free and clear of liens, claims, security interests or encumbrances in favor of the Owner's Representative, subcontractors and/or subconsultants, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Scope of Services.

5. General Terms and Conditions.

5.1. Termination, Suspension.

5.1.1. Termination for Convenience by Owner. Owner may terminate this Agreement in whole or in part upon thirty (30) days written notice to Owner's Representative for Owner's convenience. In the event of a termination for Owner's convenience, Owner's Representative shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by Owner in its sole discretion, for services satisfactorily performed prior to the date of notice of termination, together with properly documented reimbursable expenses then due. In no event shall Owner's Representative be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers, subcontractors and/or subconsultants, which could have been avoided. Owner will not pay the Owner's Representative for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. Upon receipt of notice of termination, unless the notice directs otherwise, the Owner's Representative shall do the following: discontinue all Work, cause its subcontractors and/or subconsultants to cease their work in connection with this Agreement, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement; and furnish the Owner with copies of all Project materials within seven (7) days of receipt of notice of termination.

5.1.2. Termination for Cause.

5.1.2.1 Either party may terminate this Agreement upon not less than thirty (30) days' written notice to the other party should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination; provided, however, if in the reasonable determination of the non-defaulting party the event(s) giving rise to the termination is/are reasonably susceptible to cure, the termination shall not be effective if the defaulting party cures the basis of the termination within the 30 day period to the non-defaulting party's reasonable satisfaction. When the Owner terminates this Agreement for cause, Owner's Representative shall not be entitled to receive further payment until the Work is finished. Owner's Representative shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by Owner in its sole discretion, for work or services satisfactorily performed minus all damages incurred by Owner connected with Owner's Representative's failure to perform. In no event shall

Owner's Representative be paid for unperformed Services, unsatisfactorily performed Services or costs incurred after receipt of notice of termination, or for costs incurred by subcontractors which could have been avoided. Owner will not pay the Owner's Representative.

5.1.2.2 The District shall not be responsible to Owner's Representative for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. Upon receipt of notice of termination, unless the notice directs otherwise, the Owner's Representative shall do the following: discontinue all Work, cause its subcontractors and/or subconsultants to cease their work in connection with this Agreement, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement; and furnish the Owner with copies of all Project materials within seven (7) days of receipt of notice of termination.

5.1.3. **Suspension by Owner.** Owner may, without cause, order the Owner's Representative in writing to suspend its services in whole or in part for such period of time as the Owner may determine. If the Owner suspends the Project, without cause, for more than sixty (60) consecutive days, the Owner's Representative shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Owner's Representative shall be compensated for reasonable expenses incurred as a direct result of the interruption and resumption of the Owner's Representative's services. If appropriate, the Owner's Representative's fees for the remaining services and the time schedules shall be equitably adjusted. If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Owner's Representative, the Owner's Representative may terminate this Agreement by giving not less than 30 days' written notice.

5.1.4. **Suspension by Owner's Representative.** If the Owner fails to make payments to Owner's Representative in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Owner's Representative's option, cause for suspension of performance of services under this Agreement. If the Owner's Representative elects to suspend services, Owner's Representative shall give thirty (30) days' written notice to the Owner due to the Owner's failure to make payment before suspending services. If Owner's Representative suspends services, Owner's Representative shall have no liability to Owner to the extent of any delay or damage caused the Owner because of such suspension of services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by Owner's Representative was otherwise not warranted. Before resuming services, Owner's Representative shall be paid all sums due prior to suspension and any properly documented reasonable expenses incurred as a direct result of the interruption and resumption of the Owner's Representative's services (if such suspension was warranted) and if appropriate, the Owner's Representative's compensation for the remaining services shall be equitably adjusted.

5.2. **Disputes.**

5.2.1. Owner and Owner's Representative shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the time period specified by applicable law.

5.2.2. Owner and Owner's Representative shall endeavor to resolve claims, disputes and other matters in question ("Dispute") between them by negotiation in good faith.

5.2.3. If negotiation fails to resolve a Dispute within thirty (30) days after receipt of notice of the Dispute, then the parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation. 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 qualified as an impartial third party for purposes of Section 154.052 of the Texas Civil Practice & Remedies Code.

5.2.4. Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

5.2.5. In the event the Owner and the Owner's Representative are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

5.2.6. Nothing herein shall preclude the Owner or the Owner's Representative from requesting that the Architect or the General Contractor/CMAR or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

5.2.7. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Collin County, Texas. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5.2.8. If the parties do not resolve a Dispute through mediation pursuant to this Section, the method of binding dispute resolution shall be litigation.

5.2.9. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Owner's Representative, in whole or in part.

5.3. **Choice of Law, Forum Selection, Entire Agreement, and Amendment.** This Agreement shall be construed under Texas law (without regard for choice of law considerations) and the policies and procedures of Owner, as amended from time to time. Any action arising out of this Agreement shall be heard by a state court or Federal District Court in Collin County, Texas. For this purpose, Owner's Representative specifically consents to jurisdiction in Collin County, Texas. This Agreement constitutes the entire agreement and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Owner shall not be bound by any amendment to this Agreement unless such amendment has been signed by Owner.

5.4. **Owner's Representative's Insurance.**

5.4.1 Prior to performing work under this Agreement, Owner's Representative shall procure, maintain and provide insurance certificates, policies and endorsements, in at least the amounts shown in the table contained within this Section 5.4.1 and with indemnification limits not less than the amounts indicated therein, to protect Owner's Representative and Owner from claims arising out of the performance of the Owner's Representative's services under this Agreement and/or caused by any error, omission, negligent act or omission. The required coverage shall be maintained without interruption from the date of commencement of the Work until the date of final payment, and termination of any coverage required to be maintained after final payment.

Worker's Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Owner's Representative's employment of workers and anyone for whom Owner's Representative shall be liable for Worker's Compensation claims. \$1,000,000.00 Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
Employers Liability	\$1,000,000.00 per accident \$1,000,000.00 per disease policy limit \$1,000,000.00 per disease per employee

Commercial General Liability: • Each Occurrence • General Aggregate • Personal Injury • <u>Products - Completed Operations</u> hazard, providing coverage for claims including: 1. damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person; 2. personal and advertising injury; 3. damages because of physical damage to or destruction of tangible property, including the loss of use of such property; 4. bodily injury or property damage arising out of completed operations; and 5. the Owner's Representative's indemnity obligations provided for in this Contract	\$1,000,000.00 \$2,000,000.00 \$1,000,000.00 each person \$1,000,000.00 aggregate
Automobile Liability	\$1,000,000.00 combined single limit Coverage shall be for all owned, non-owned and hired motor vehicles, and any other statutorily required automobile coverage.

5.4.2 The required insurance such insurance shall be in a form approved by the Owner, with an effective date prior to the beginning date of services. All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, [www.ambest.com], and that permits waivers of subrogation. Any deviation from the requirements of Section 5.4 (including all subsections) can only be approved by Owner's Board of Trustees or designee.

5.4.3 Satisfactory evidence of insurance required by this Article shall be provided to Owner not later than five (5) business days after execution of the Agreement by Owner. Satisfactory evidence shall include a duly-executed ACORD Form 25 Certificate of Liability evidencing the endorsements required and notations required by this Contract, copies of all required insurance policies, declarations and endorsements themselves. The Owner's Representative shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements, as they are provided to Owner's Representative. Each certificate shall contain a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar days prior written notice to Owner.

5.4.4 **Notice of Cancellation, Expiration and Continuation**

5.4.4.1 Within three (3) business days of the date the Owner's Representative becomes aware of an impending or actual cancellation or expiration of any insurance required by this Agreement, the Owner's Representative shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Owner's Representative, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Owner's Representative. The furnishing of notice by the Owner's Representative shall not relieve the Owner's Representative of any contractual obligation to provide any required coverage.

5.4.4.2 The certificates and the insurance policies required by this Section 5.4 shall contain a provision stating that coverages afforded under the policies will not be canceled for any reason, other than nonpayment of premium, or reduced or restricted due to a material change in coverage, until at least 30 days' prior written notice of such cancellation or material change has been given to the Owner.

5.4.4.3 An additional certificate, policy and endorsement evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the Owner's Representative's final invoice, and thereafter upon renewal or replacement of such coverage until the expiration of the time period(s) required by the terms of this Agreement. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Owner's Representative with reasonable promptness.

5.4.5 All insurance required herein shall, by endorsement, be primary and non-contributory insurance with respect to the Owner, its officers, employees, representatives or agents and shall seek no contribution from any insurance available to Owner. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged. A copy of such endorsement or endorsements shall be provided to the Owner at the same time as the Insurance Certificates required above.

5.4.6 **Additional Insured Obligations.** The Owner's Representative shall cause naming Owner, its officers, employees, representatives and agents, to be named as an additional insured on the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability. Evidence of additional insured status will be provided to Owner by providing a copy of the endorsement being utilized to effect the additional coverage and shall be subject to the Owner's reasonable approval.

5.4.7 Owner's Representative shall furnish to Owner insurance certificates and endorsements upon request at any time during the applicable statute of limitations. If Owner's Representative neglects or refuses to provide any insurance required herein, or if any insurance is canceled, and not replaced, Owner may, but shall not be obligated to, procure such insurance at Owner's Representative's expense or may treat such failure as a default under this Contract.

5.4.8 Insurance provided pursuant to this Section shall be considered a part of the Owner's Representative's basic services and shall not be a Reimbursable Expense under this Agreement.

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

5.4.10 The Owner's Representative failure to comply with any of these provisions is a breach of contract by the Owner's Representative that entitles the Owner to declare the contract void if the Owner's Representative does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

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

5.4.12 The Owner's Representative Commercial General Liability policy under this Section 5.4 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity provided in this Contract, arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

5.4.13 **Disclosure of Deductibles.** The Owner's Representative shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Owner's Representative. If the insurance is written with stipulated amounts deductible under the terms of the policy, the Owner's Representative shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Owner's Representative to maintain such insurance and to so notify the Owner, then the Owner's Representative shall bear all reasonable costs properly attributable thereto.

5.5. **Indemnification.**

5.5.1. TO THE FULLEST EXTENT PERMITTED BY LAW, THE OWNER'S REPRESENTATIVE WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, AND THE AGENTS AND EMPLOYEES OF THE DISTRICT FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE OWNER'S REPRESENTATIVE, A SUBCONTRACTOR, SUBCONSULTANT ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER, OWNER'S TRUSTEES, OR THE AGENTS OR EMPLOYEES OF THE DISTRICT, WHERE THAT NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE. IN SUCH EVENT, WHERE THE NEGLIGENCE OF OWNER OR THE NEGLIGENCE OF ANY OTHER PARTY INDEMNIFIED HEREUNDER, IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE, OWNER'S REPRESENTATIVE'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND OWNER'S REPRESENTATIVE TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND OWNER'S REPRESENTATIVE ARE PARTIES. SUCH OBLIGATION 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 5.5.

5.5.2. IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 5.5 BY AN EMPLOYEE OF THE OWNER'S REPRESENTATIVE, A SUBCONTRACTOR, SUBCONSULTANT, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 5.5.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE OWNER'S REPRESENTATIVE OR A SUBCONTRACTOR OR SUBCONSULTANT UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

5.5.3 The Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Owner's Representative is to comply with said statutes in performance of the Work by Owner's Representative and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Owner's Representative.

5.5.4 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Paragraph 5.5, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

5.5.5 The provisions of Article 5.5 in its entirety shall survive the completion, termination or expiration of this Agreement.

5.5.6 Each agreement between Owner's Representative and its subcontractors shall include provisions requiring Owner's Representative's subcontractors and subconsultants to the fullest extent allowed by law, to indemnify, defend (with counsel reasonably acceptable to Owner), and hold harmless Owner and the Owner's Representative from and against all injuries, loss, causes of action, claims, liability, damages or judgments, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of negligent acts and/or errors and/or omissions of Owner's Representative's subcontractor's performance of the Work.

5.6. Audit and Retention of Books and Records.

5.6.1. Owner's Representative shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to the Owner.

5.6.2. Owner and/or its accountants, auditors, and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of the Owner's Representative's information, materials, records or data relating to this Project, including but not limited to, accounting records, estimating Work sheets, correspondence, change order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions recordings, computerized information, drawings, agreements, and other information, materials, records or data relating to this Project ("Records").

5.6.3. Owner's Representative shall preserve the Records for a period of five (5) years after final payment or for such longer period as required by law, provided, however, that if a Dispute is asserted during said 5-year period, the Owner's Representative shall retain all such Records until the Dispute has been resolved.

5.6.4. Owner's Representative shall require all payees to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the Owner's Representative and the payee.

5.6.5. Owner and its accountants, auditors and agents shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article, and Owner and its accountants, auditors and agents agree to perform all of their work in that space and not elsewhere in the Owner's Representative's offices, to not interact with the Owner's Representative's employees, and to not otherwise unreasonably interfere or disrupt the work of the Owner's Representative's employees.

5.7. Proprietary Interests and Confidential Information

5.7.1. Owner's Representative shall not use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Owner's Representative shall not have any authority to advertise or claim that Owner endorses Owner's Representative's services, without Owner's prior written consent.

5.7.2. Owner's Representative acknowledges and agrees that any Confidential Information disclosed to it, its subcontractors or other representatives pursuant to this Agreement shall be used only for the purposes contemplated in this Agreement, shall be kept confidential and in conformance with all state and federal laws relating to data privacy, and shall remain the Owner's property. The term "Confidential Information" means all Owner knowledge, information, data, site plans, design plans, materials and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Owner's Representative and its agents, employees, contractors and consultants with respect to the Project. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that Owner's Representative can show (by contemporaneous written records) that Owner's Representative had it in its possession before beginning the Project and before disclosure by Owner. Owner's Representative agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section. Owner's Representative agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section. Owner's Representative and its employees, agents, contractors and consultants shall not make or otherwise disseminate any public announcement or press release with respect to the Project without the Owner's prior written approval.

5.7.3. The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, *et seq.*, and the Texas Open Meetings Act, Texas Government Code, Section 551.001, *et seq.*

5.7.4. Within fifteen (15) days of the completion or earlier termination of this Agreement, or upon earlier request by Owner, Owner's Representative, upon the request of Owner, shall return all copies of such Owner provided data, documents, or information in Owner's Representative's possession or control, and provide Owner with proof of such return.

5.8. Ownership of Works, Intellectual Property Rights.

5.8.1. The term "Works" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which are to be prepared for Owner and delivered under this Agreement. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by Owner. Owner's Representative agrees that all copyrightable Works shall be considered a "work made for hire" and that Owner is the author of and owns all rights in and to the Works, and agrees that if the Works may not be considered a work made for hire under 17 U.S.C., Sections 101 and 201(b), Owner's Representative shall without further compensation, assign all rights Owner's

Representative may have in the Works to Owner. Owner's Representative waives any and all statutory moral rights in the Works which Owner's Representative may have arising under 17 U.S.C. 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of moral right. Owner's Representative shall, without further compensation, disclose information to Owner and execute such documents as may be reasonably necessary to assist Owner in securing and enforcing rights in the Works and related proprietary rights.

5.8.2. Owner shall be the owner of and have all common law, statutory, and other reserved rights in all 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's consultants under their respective services agreements, including, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials (the "Instruments of Service"). Owner's Representative shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights. Owner's Representative is authorized to use and reproduce the Instruments of Service provided to it 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. Owner's Representative 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, which the Owner may withhold in its sole discretion.

5.9. **Warranty.** Owner's Representative expressly represents, warrants and guarantees that (a) it (i) shall comply with all applicable Laws; and (ii) is not currently debarred or suspended by any federal agency from doing business with the federal government, and Owner's Representative shall notify Owner if it becomes debarred or suspended during the Term; and (b) all services and goods (if any) provided under this Agreement: (i) are fit for the particular needs and purposes of Owner as may be communicated to Owner's Representative; (ii) comply with the highest warranties and representations expressed by Owner's Representative orally or in any written advertisement, correspondence, or other document provided to or in the possession of Owner; (iii) comply with all applicable Laws; (iv) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. IF ANY OF THE FOREGOING WARRANTIES IS BREACHED, OWNER'S REPRESENTATIVE AGREES TO CORRECT ALL DEFECTS AND NONCONFORMITIES AT OWNER'S REPRESENTATIVE'S SOLE EXPENSE, TO BE LIABLE FOR ALL DIRECT DAMAGES SUFFERED BY OWNER AND TO DEFEND, INDEMNIFY, AND HOLD HARMLESS OWNER FROM ANY CLAIM ASSERTED BY ANY PERSON RESULTING IN WHOLE OR IN PART FROM SUCH BREACH. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by Owner.

5.10. **Conflict of Interest.** Owner's Representative affirms that, to the best of its knowledge, no actual or potential conflict exists between Owner's Representative's family, business or financial interests and its services under this Agreement, and that it shall raise with Owner any questions regarding possible conflict of interest that may arise. Owner's Representative further affirms that it shall not hire any officer or employee of Owner to perform any service covered by this Agreement. If the Work is to be performed in connection with a federal contract or grant, Owner's Representative shall not hire any employee of the United States Government to perform any service set forth herein.

5.11. **Taxes.**

5.11.1 The Owner's Representative shall not include in its pricing or invoicing, any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. **OWNER'S REPRESENTATIVE HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF OWNER'S REPRESENTATIVE OR ANY SUBCONTRACTOR OR SUBCONSULTANT TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.**

5.11.2 Upon execution of this Agreement, Owner's Representative will provide to Owner a signed IRS Form W-9.

5.12. **Use of Owner Name or Logo.** Owner's Representative agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with Owner or the name of any representative of Owner in any sales promotion work or advertising, or any form of publicity, without Owner's written permission in each instance.

5.13. **Independent Contractor.** OWNER'S REPRESENTATIVE SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OF OWNER. NEITHER OWNER'S REPRESENTATIVE NOR ANY AGENT OR EMPLOYEE OF OWNER'S REPRESENTATIVE SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF OWNER. OWNER'S REPRESENTATIVE SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX ON ANY MONIES PAID PURSUANT TO THIS AGREEMENT. OWNER'S REPRESENTATIVE ACKNOWLEDGES THAT OWNER'S REPRESENTATIVE AND ITS EMPLOYEES ARE NOT ENTITLED TO TAX WITHHOLDING, WORKER'S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR ANY EMPLOYEE BENEFITS OF OWNER, STATUTORY OR OTHERWISE. OWNER'S REPRESENTATIVE SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND OWNER TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. OWNER'S REPRESENTATIVE SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF OWNER'S REPRESENTATIVE, ITS EMPLOYEES, AND AGENTS.

5.14. **Notices.** Any notice provided for in or permitted under this Agreement shall be made in writing, and may be given or served by (i) delivering the same in person or by e-mail or facsimile transmission to the party to be notified, or (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, or (iii) by depositing same with a reputable overnight courier service. If notice is deposited in the United States mail pursuant to clause (ii) of this Section, it will be effective from and after the day it is received by the addressee or receipt thereof is refused by the addressee, unless such day is not a business day, and then it shall be deemed received on the next business day. Notice given in any other manner shall be effective only if and when received by the party to be notified unless the day it is received is not a business day, and then it shall be deemed received on the next business day. For the purpose of notice, the address of the party shall be, until changed as hereinafter provided for, as follows:

If to Owner:
COMMUNITY INDEPENDENT SCHOOL DISTRICT Attn: Superintendent Phone: _____ E-mail: _____

If to Owner's Representative:
[Insert Firm Name] Attn: [Contact] [Address] Phone: _____ Facsimile: _____ Email: _____

or to such other address as the Owner may specify in a written notice to the Owner's Representative or the Owner's Representative may specify in a written notice to the Owner in accordance with this Section. Each party shall have the right from time to time and at any time to change its respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party. Each party shall have the right from time to time to specify additional parties to whom notice hereunder must be given by delivering to the other party fifteen (15) days' written notice thereof setting forth the address

of such additional party or parties; provided, however, that no party shall have the right to designate more than three (3) such additional parties.

5.15. **Non-Waiver.** No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

5.16. **Assignment.**

5.16.1 Owner's Representative may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer or any other means, without the prior written consent of Owner. As a condition of consent, if same is given, Owner's Representative shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Owner's Representative, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by District in accordance with this Article.

5.16.2. Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Owner's Representative assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, Owner may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Owner's Representative shall thereupon cease and terminate, notwithstanding any other remedy available to Owner under this Agreement. The violation of this provision by Owner's Representative shall in no event release Owner's Representative from any obligation under the terms of this Agreement, nor shall it relieve or release Owner's Representative from the payment of any damages to District, which District sustains as a result of such violation.

5.16.3. Owner's Representative agrees to notify Owner's representative of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to Owner under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement agrees to notify Owner's representative of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to Owner under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement.

5.17. **Severability.** If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.

5.18. **Survivability.** The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

5.19. **Force Majeure.** In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by a Force Majeure Event, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence. For purposes of this agreement, a Force Majeure event is an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent; provided that such event or circumstance is limited to the following: (a) complete inaccessibility to the location at which services were to be performed; (b) governmental act (including but not limited to state, federal, and /or local authority related to a pandemic or epidemic); (c) earthquakes, flood, fire, tornado, fire or other physical natural disaster; (d) act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction,

expropriation, compulsory acquisition, seizure of works or requisition; (e) plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; (f) the event is made impracticable if act(s)/circumstance(s) cause performance to become substantially more difficult, complex or challenging, such as an excessive or unreasonable increase in performance costs or if increased costs make performance commercially senseless. (“Force Majeure Event”). The party effected by the Force Majeure Event shall provide notice of such party’s failure or delay in performance due to a Force Majeure Event to the unaffected party promptly, but no later than five (5) business days after the occurrence of a Force Majeure Event. Such notice shall describe the Force Majeure Event and the actions taken to minimize the impact thereof.

5.20 No Third-Party Beneficiaries. For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with Owner or Owner’s Representative or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Owner or Owner’s Representative.

5.21. Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. A facsimile signature will constitute an original and binding signature of a party.

/SIGNATURES ON FOLLOWING PAGE/

This Agreement is entered into as of the Effective Date, which is the date of the last signature below.

AGREED TO BY DISTRICT: COMMUNITY INDEPENDENT SCHOOL DISTRICT

DRAFT FOR PROCUREMENT ONLY – NOT FOR EXECUTION

By: _____
[Printed Name and Title]

Date: _____

AGREED TO BY OWNER’S REPRESENTATIVE: [Insert Full Legal Company Name]

DRAFT FOR PROCUREMENT ONLY – NOT FOR EXECUTION

By: _____
[Printed Name and Title]

Date: _____

EXHIBIT A TO AGREEMENT BETWEEN OWNER AND OWNER’S REPRESENTATIVE
--

Major Capital Improvement Projects
Requires *full scope* of services [to be inserted]

Category	Budget
	\$
	\$
	\$
	\$
	\$
	\$
Total Bond	\$

**The District is currently utilizing Construction Manager at Risk (CMAR) as the delivery method of construction services*

EXHIBIT B TO AGREEMENT BETWEEN OWNER AND OWNER'S REPRESENTATIVE
--

SCOPE OF WORK

During the Term of this Agreement Owner's Representative shall provide the following services:

1. GENERAL

1.1 Maintain an organized filing system for all Project documents and records. At Project completion, Owner's Representative shall certify that all Project documents and records have been delivered, either electronically or in hard copy.

1.2 Attend Project meetings as requested by the District (including, without limitation, meetings with the Architect, Contractor, Consultants, or Owner). In the absence of meeting minutes prepared by others, Owner's Representative will provide Owner with minutes from such meetings prepared by Owner's Representative. Owner's Representative shall review for accuracy the minutes of such meetings prepared by either the Architect, Contractor, or others. Owner's Representative shall clarify, amend and report any discrepancies affecting the Project.

1.3 Upon receipt and review of project documents furnish to the Owner reports on any review comments, discrepancies, or other information required to be reported to the Owner regarding (a) the status of the Project; (b) a comparison of the Project budget to costs incurred through the date of the report; (c) a report of potential savings on CMAR Projects; (d) a comparison of the Project schedule to the work actually completed through the date of the report; (e) any revision to the Project schedule or Project budget made during the period covered by the report; (f) a summary of change orders made during the period covered by the report; (g) a list of all pending change orders and all outstanding issues requiring action or approval by Owner; (h) the status of any governmental requirements and activities required to facilitate approval of the Project; and (i) any other reports concerning the Project as Owner may reasonably request.

1.4 If requested by the District, provide Project accounting services related to reviewing, certifying, and forwarding to Owner for payment the invoices from the Architect, Contractor/CMAR and/or other consultants, including review and critical evaluation of applications for payment by the Contractor and/or CMAR for each Project (including back-up documentation provided by Contractor/CMAR); review and certify certificates for payment issued by Architect and make written recommendations to Owner concerning payment. Owner's Representative's certification for payment shall constitute a representation to the Owner that, based upon the Owner's Representative's evaluation of the Work covered by the Application, and in the case of the Contractor/CMAR the documentation of costs provided, the work has progressed to the point indicated, the quality of the work is in accordance with the Contract Documents and in the case of the Contractor/CMAR, the Payment Application correctly calculates the amounts due based on the Contract terms. Owner's Representative and Owner shall cooperate with one another to develop an orderly procedure for review and payment of Project costs and expenses, including fees for the Architect and Consultants.

1.5. Be available for questions and follow up by telephone or site meetings with Owner.

1.6. Become familiar with, and provide its services are consistent with all applicable Laws, Regulations, Ordinances and the requirements of easements, licenses, and other pertinent agreements to the extent the foregoing are made known to Owner's Representative.

1.7. Provide leadership to the Project Team on all matters relating to the planning, design, governmental approvals, construction, and other activities necessary to complete the Project. Owner shall select, hire and pay the Project Team with the consultation and advice of the Owner's Representative.

2. PRE-DEVELOPMENT PHASE SERVICES

2.1 To the extent items below are not already completed on the Effective Date of this Agreement, Owner's Representative shall (1) coordinate the preparation by the Architect of a description of the program for each Project within the Scope, in accordance with Owner's goals and objectives (the "Project Program"); (3) assist Owner in establishing a Project budget for each Project based on a preliminary estimate of Project costs, including without limitation Owner's internal soft costs and construction costs, which Owner's Representative shall update from time to time with increased detail as the design of the Project progresses (the "Project Budget"); and (4) assist Owner in managing the Project Schedule and Project Budget to maximize value, keep the work progressing in a logical manner,

and avoid or mitigate interruptions of design and construction. (5) review Contractor/CMAR and Architect's Schedules and Cost Estimates (including updates) and critically evaluate the accuracy and advise Owner on any discrepancies found thereof.

2.2 Advise Owner regarding and assist with redevelopment activities, including but not limited to obtaining and evaluating any necessary soil reports and studies and determining the need for any site soil corrections; obtaining and evaluating survey, topographical survey, schematic designs and elevations for the Project; and reviewing the need for any property rights or other actions related to underground utilities, access, encroachments or other development limitations disclosed in the survey. Owner's Representative shall advise and assist the Owner in all activities necessary to obtain any and all property or rights-of-way necessary for development of the Project or the provision of adequate utility services and access thereto.

2.3 Coordinate and assure attorney review of contracts between Owner and Consultants hired directly by the Owner, prior to execution by the Owner.

2.4 Coordinate any required environmental review of the Project, and advise and assist Owner in obtaining all environmental permits or approvals required for the Project, if any.

2.5 Coordinate with Owner in identifying any governmental and quasi-governmental authorities having jurisdiction over the Project, as well as any other organizations that may have an interest in the Project; assist the Architect in obtaining permits for the Project; coordinate with the various municipal and other governmental agencies having permit responsibilities for the Project; represent the Owner at meetings of the applicable governmental units; recommend to the Owner appropriate policies or decisions to be followed on public matters affecting the Project; coordinate with the Contractor the obtaining of necessary building permits or other necessary construction approvals for the Project; and advise the Owner as to any material issues noted by the Architect.

2.6 Schedule and attend regular meetings with the Architect related to the development of the design.

2.7 Coordinate with the Contractor/CMAR and provide recommendations to the Owner and Architect regarding construction feasibility, value engineering, availability of materials and labor, time requirements for installation and construction, and factors relating to costs, including costs of alternative designs or materials in a manner consistent with the Project Program, Budget and Schedule, and possible cost reductions and economies if and when necessary to reconcile the Project Budget, Program, and Schedule.

2.8 Review and comment on the drawings and specifications for the Project (the "Construction Documents"), as they are completed by the Architect, and coordinate their review by the Contractor/CMAR, if any.

2.9 Assist the Owner in the evaluation and recommendation of appropriate design alternatives in light of the Owner's Project Program and the Project Budget and Schedule, provided the Owner's Representative shall not assume any of the Architect's responsibilities for design or any of the Contractor's/CMAR's responsibilities for construction means, methods or costs.

2.10 Upon approval by Owner of design development plans and specifications, Owner's Representative shall (a) lead the process on behalf of the Owner in reviewing and coordinating the preparation by the Architect and other Project consultants of the Construction Documents for the Project; and (b) make recommendations regarding alternative solutions whenever design details appear to (i) adversely affect construction feasibility, the Project Program, Budget or Schedule; or (ii) cause the Project to deviate from the approved drawings or requirements of Owner.

2.11. Owner's Representative shall (i) review cost estimates for the estimated Project costs to be incurred by Owner in designing and constructing the Project (the "Project Costs Estimate"). The Project Costs Estimate shall include separate line items for each cost category included in the Project cost, with line items for anticipated contracts and subcontracts, and (ii) evaluate pricing for alternative building and engineering systems. In addition, Owner's Representative shall:

2.11.1. Recommend modifications to the Project design, Project Budget, Project Schedule and Project Program to reconcile each with the others, for final decision by Owner;

2.11.2. Assist Owner in setting a final Project Budget, based on the approved design and the Project Schedule, the Project Program, the Project Costs Estimate, and financial constraints identified by Owner;

2.12. Act as Owner's representative in coordinating and assisting the Architect in the preparation of bid documents, which shall consist of, among other things, the working drawings.

2.13. Serve as non-voting member of the Evaluation Team for the Projects, review proposals, prepare analyses and make recommendations to Evaluation Team regarding areas within its expertise.

2.14. Review and critically evaluate GMP Proposal, on behalf of Owner and make recommendations regarding revisions or approve for submission to the Board of Trustees, including the following:

2.14.1 Review line item costs for “Miscellaneous” costs not appropriately allocated to General Conditions or Cost of the Work, as defined by the Contractor/CMAR Contract;

2.14.2 Review line item costs for items not appropriately allocated to General Conditions or Cost of the Work, as defined by the Contractor/CMAR Contract;

2.14.3 Review methodology and calculation of GMP and markups to assure that they comply with the Contract Terms;

2.14.4 Review and provide recommendations to Owner, if any, regarding Contractor/CMAR’s proposed mobilization schedule, temporary Project facilities, equipment, materials and services during construction and the assignment of responsibilities relating to same.

2.15. Assist the Owner in conducting post-ranking negotiation of the Project construction contract with either Contractor/CMAR.

2.16. Make recommendations as to the timely and economical purchases of materials and equipment; and monitor the purchase of such items.

3. CONSTRUCTION PHASE SERVICES

3.1. Owner’s Representative shall represent the Owner in its communications with Contractor, and Consultant(s); attend regular on-site meetings to review construction progress and pay requests and to provide appropriate recommendations to the Owner concerning the Owner’s decisions on construction matters, including, where necessary, alternative designs or materials; and coordinate, review, advise the Owner concerning, and approve change orders, submittals, and requests for information.

3.2. Owner’s Representative shall (i) assist and review the processing of change orders, (ii) advise Owner concerning the necessity for, scope of and recommended cost of change orders, and (iii) negotiate, on Owner’s behalf, all change orders with Contractor.

3.3. Assist with coordination of the Architect’s review and approval of shop drawings, product data and other submittals by Contractor, as necessary.

3.4. In conjunction with the Contractor/CMAR who has prime contractual responsibility, the Owner’s Representative shall additionally review and advise the Owner concerning the adequacy of the Contractor’s personnel and equipment, and the availability of materials and supplies to meet the Contractor’s schedules in relation to the Project Schedule.

3.5. Notify Owner if Owner’s Representative becomes aware that the work of Contractor is not being performed in accordance with the requirements of the Contract Documents. As appropriate, Owner’s Representative shall have authority, with written authorization from the Owner, to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is covered, installed or completed. Owner’s Representative shall review any and all test reports and notify the Owner, the Architect and the Contractor, as appropriate, of deficiencies in the work of which Owner’s Representative becomes aware and shall advise the Owner of projected consequences of such default shall make recommendations to Owner with respect thereto.

3.6 Although Owner’s Representative cannot guarantee the performance by Contractor, Owner’s Representative shall recommend courses of action to the Owner when Owner or Owner’s Representative becomes aware that requirements of any Project construction contract are not being fulfilled, or when Contractor falls behind in its schedule; shall communicate recommendations, as directed by the Owner, to Contractor on behalf of the Owner; shall monitor Contractor's performance of such recommendations; and shall report Contractor's progress to the Owner on at least a monthly basis.

3.7. Advise the Owner concerning the purchase of building materials by the Contractor.

3.8. Attend on-site review of the Project to confirm substantial and final completion of the construction of the Project, and notify Owner when Owner's Representative believes the work under a Project construction contract is substantially complete and that a punch list should be prepared.

3.9. Owner's Representative shall confirm with the Architect that the Contractor has obtained from the Contractor/CMAR "as-built" drawings and any other warranties and documentation required by Construction Contract, as a condition precedent to Final Completion of each Project.

3.10. Together with the Architect and Owner, monitor and observe the testing and start-up of all utilities, systems and equipment for each Project; and coordinate with TAB Consultant as necessary to assure deviations noted have been corrected.

3.11. Confirm with Architect all requirements for final close-out of the Project and conditions-precedent to Final Payment have been met, and provide assistance as necessary to assure that all requirements for final close-out of the Project have been met including but not limited to (i) obtaining, or causing the Contractor to obtain, all government approvals required for the legal use and occupancy of the Project, (ii) obtaining all warranties, guarantees, bonds, insurance certificates, installation manuals, and other items required pursuant to the Project construction contracts, (iii) obtaining all affidavits, waivers, and releases the Contractors are required to provide pursuant to the Project construction contracts to achieve final completion of the Project, (iv) confirming with the Architect that the Contractor has obtained from the Contractor/CMAR "as-built" drawings, (v) analyzing all claims (including change order disputes and other claims for extra compensation) asserted by the Contractors and the Architect, and/or (vii) representing Owner at meetings and/or inspections scheduled by Owner and held to resolve problems relating to design, physical condition or operation of the Project to seek enforcement of warranties.

3.12. Assist the Owner with the selection of the TAB Consultant and/or Commissioning agent and coordinate and administer the Project TAB process and Project Commissioning process, if required on the specific Project.

3.13. Critically review final payment application of Contractor/CMAR for each project and make an independent evaluation of the appropriate project savings to be credited to the Owner as a deductive Change Order; negotiate appropriate savings disputes on behalf of the Owner, if any is required; review any final deductive Change Order for accuracy and completeness.

4. SECURITY/SAFETY.

While performing the Work, the Owner's Representative shall promptly inform the Owner if the Owner's Representative becomes aware of any security concerns and/or unsafe conditions.

EXHIBIT C TO AGREEMENT BETWEEN OWNER AND OWNER’S REPRESENTATIVE
--

OWNER REPRESENTATIVE’S PROJECT TEAM

The Owner Representative’s Project Team include the following:

Name: _____

Title: _____

Direct Phone: _____

Email: _____

Name: _____

Title: _____

Direct Phone: _____

Email: _____

Name: _____

Title: _____

Direct Phone: _____

Email: _____

Owner’s Representative agrees that if any changes are made to the Project Team during the course of the Agreement, Owner’s Representative will provide Owner with the new proposed team member’s resume and submit to a criminal background check to the extent required. Owner must approve any new Project Team member(s). If the composition of the Project Team changes substantially, Owner may terminate this Agreement, and Owner is released from any payment obligations as of the date of termination and entitled to a pro rata reimbursement of any funds paid for work that was not completed.