JOB NO. 23.532

GENERAL SERVICES AGREEMENT FOR ARCHITECT SERVICES

This General Services Agreement for Architect Services ("Agreement") is made this _____ day of ____, 2023, by and between the El Paso Independent School District, an independent school district and political subdivision of the State of Texas ("Owner") and Bath Group, LLC, a Delaware Limited Liability Company. All references to "Architect" set forth herein shall mean ("Consultant").

All references to "Architect' herein shall refer to Bath Group, LLC, a Delaware Limited Liability Company, which is licensed and qualified to perform all of the professional commissioning services set forth herein.

ARCHITECT shall furnish the consulting services referred to in Section 1 below and described in detail in Exhibit "A" and/or "A-1" which are attached hereto, which services are referred to as the "Services." The specific work performed under this Agreement to which such Services apply is referred to herein as the "Project" and is described generally as follows:

Commissioning Services for HVAC Replacement in High Occupancy Areas of Middle Schools and High Schools
Project # 23.532
(Ref. RFQ. # 23-043)

Section 1. **BASIC SERVICES OF ARCHITECT**. OWNER has engaged ARCHITECT to furnish for OWNER certain "Basic Services" in accordance with the terms and conditions of this Agreement. A detailed description of the Basic Services to be furnished by ARCHITECT is set forth in Exhibit "A."

Section 2. **ADDITIONAL SERVICES OF ARCHITECT**. When authorized in writing by OWNER, ARCHITECT shall furnish Services in addition to Basic Services which shall be referred to as "Additional Services." If the Additional Services have been identified at the time of execution of this Agreement, they are itemized in the attached Exhibit "B" and will be paid for by OWNER as described in Article 4 of the Standard Provisions attached hereto. If Further Additional Services ("Further Additional Services") not identified in the attached Exhibit "B" are requested by OWNER, this Agreement will be supplemented with a separate written document which will describe the Further Additional Services and provide for the method of compensation. Unless the Additional and Further Additional Services are identified in Exhibit B or a separate written document and are agreed to in writing by OWNER prior to the Services being rendered, OWNER shall not be responsible for any work or Additional or Further Additional Services completed by the ARCHITECT or its agents or contractors.

Section 3. **METHODS OF COMPENSATION**. Compensation for Basic and Additional Services of ARCHITECT rendered pursuant to Sections 1 and 2 above will be paid on one or more of the following specified bases as indicated below and further defined in Exhibit "C."

3.1. Lump Sum. A lump sum of $468,690.00, which is based on the Construction Cost Limitation not to exceed $ n/a for this Project.

3.2. Percentage. An amount equal to n/a % of the Final Construction Cost of the Project, not including change orders. Total compensation for services provided shall not exceed $ n/a .

3.3. Unit Price. An amount based on the unit price schedule for Services. (see attached, if applicable)

3.4. Hourly Rate. An amount based on the hourly rate schedule for each hour of ARCHITECT's time spent in performing its Services. The total compensation for this Agreement if based on an hourly rate shall not exceed $ n/a .

3.5 If any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Exhibit C based on the Owner's estimated cost for portion of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

Section 4. **INCORPORATION OF STANDARD PROVISIONS**. The terms and conditions of OWNER's current Standard Provisions for Architect Agreements ("Standard Provisions") is attached hereto and incorporated in this Agreement as if fully set forth herein, to the extent applicable for the scope of Architect's commissioning services. ARCHITECT acknowledges that it has received and reviewed the Standard Provisions prior to executing this Agreement.

Section 5. **MISCELLANEOUS PROVISIONS**.

5.1. Construction and/or Project Implementation. The Construction and/or Project Implementation Budget (also referred to as the "Construction Cost Limitation"), as defined in Article 5.2 of the Standard Provisions, shall not exceed $0.00.

5.2. The Initial Information for the Project is attached hereto as Exhibit "D."

5.3. Additional Terms.

5.3.1. OWNER may, without penalty, terminate this Agreement at the end of any budget period of OWNER occurring during the term of this Agreement, if funds for this Agreement during the succeeding budget period have not been appropriated. ARCHITECT shall not be entitled to receive payments or amounts under this Agreement in excess of the amounts appropriated for the then current budget period of OWNER.

5.3.2. OWNER reserves, and does not waive, its rights of sovereign immunity and similar rights and its rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on OWNER not permitted by applicable law shall be enforceable.

5.3.3. Records relating to this Agreement may be subject to disclosure pursuant to the Texas Public Information Act f/k/a Open Records Act, Texas Government Code, Chapter 552. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the ARCHITECT agrees that the contract can be terminated if the ARCHITECT knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars ($1,000,000.00) or more, the ARCHITECT agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the OWER for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the OWNER; and (3) on completion of the contract, either: (a) provide at no cost to the OWNER all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the OWNER.

5.3.4. OWNER is EXEMPT from all taxes. Upon request, copies of sales tax exemption certificates will be provided by OWNER. OWNER shall have no liability whatsoever for taxes or assessments of any kind.

5.3.5. Any provision of this Agreement permitting or requiring discretion, consent, or approval by ARCHITECT will be deemed to require that the same be exercised reasonably and in good faith. Any provision of this Agreement involving any representation or warranty by OWNER shall be subject to the actual knowledge of OWNER's entire Board of Trustees.

5.3.6. Any provision in this Agreement limiting ARCHITECT's liability to OWNER is deleted in its entirety.

5.4 Asbestos Awareness Training. The supervising Architect/Engineer and design project manager of ARCHITECT, executing their duties under this Agreement, will be required to receive Asbestos Awareness Training, as defined in 40 CFR Part 763.92, at no additional expense to OWNER. The Asbestos Awareness Training will be two (2) hours in duration and will cover, as a minimum, the following topics:

- Information regarding asbestos and its various uses and forms
- Information on the health effects associated with asbestos exposure
- Locations of Asbestos Containing Building Materials ("ACBM") identified throughout each school building in which the work will be performed
- Recognition of damage, deterioration, and delamination of ACBM
- Name and telephone number of the person designated to carry out general local education agency responsibilities and the availability and location of the management plan

5.5. ARCHITECT shall review all Material Safety Data Sheets ("MSDS") of Shop Drawings/Product data Samples and similar submittals, as submitted by the Contractor, to ascertain that no Asbestos Materials, Asbestos Containing Materials, or other Hazardous Materials are being utilized or installed.

5.6. ARCHITECT shall submit, in compliance with the Texas Department of State Health Services ("TDSS"), Texas Asbestos Health Protection Rules (TAHPR), July 8, 2021, a statement that no ACBM were used during the construction of the Project. ARCHITECT shall review the information included in the MSDS of all products used in the construction of the Project as compiled by the Contractor and, finding no asbestos in any of those products, shall make this statement.

5.7. ARCHITECT shall submit to OWNER a certificate for each person signifying successful completion of the required training on an annual basis. ARCHITECT is responsible for ensuring that the OWNER has current certificates on file for the entire term of this Agreement.

5.8. Mold Awareness Training. The supervising architect/engineer and design project manager of ARCHITECT, executing their duties under this Agreement, will be required to receive Mold Awareness Training, at no additional expense to OWNER. The Mold Awareness Training will be two (2) hours in duration and will cover, as a minimum, the following topics:

- Understanding mold and moisture
- Health effects from mold exposure
- Texas mold regulations highlights
- Mold prevention techniques
- What to do if mold is detected

5.9. ARCHITECT shall familiarize itself with the "Texas Mold Assessment and Remediation Rules," as well as the Environmental Protection Agency's "Mold Remediation in Schools and Commercial Buildings" and ensure that these provisions are complied with on the Project.

5.10 The Instructions to Designers for the Project is attached hereto as Exhibit "E," to the extent applicable for the scope of Architect's services.

5.11 The Architect shall provide services in compliance with this Agreement, the Contract Documents, all current local, state, and federal laws, rules and regulations, together with the policies of the OWNER, including, to the extent applicable, the Federal Terms and Conditions Education Department General Administrative Regulations (EDGAR) Contracts under Federal Awards Terms and Conditions and ESSER Special Provisions attached hereto as **Addendum A** and fully incorporated herein. To the extent of any conflict between any other provision in the Agreement and Addendum A, Addendum A shall control.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

ARCHITECT: BATH GROUP, LLC, a Delaware Limited Liability Company

By: _____
Javier Garcia, Vice President.

ATTORNEY
FORM APPROVED

By: _____
For Jeanie C. Collins
Attorney for El Paso Independent School District

EL PASO INDEPENDENT SCHOOL DISTRICT

By: _____
Diana Sayavedra
Superintendent

EXHIBIT "A" TO GENERAL SERVICES AGREEMENT
DETAILED DESCRIPTION—BASIC SERVICES

ARCHITECT shall provide for OWNER under Section 1, the following BASIC SERVICES in accordance with the terms and conditions of this Agreement:

Structural Engineering Services
Mechanical Engineering Services
Civil Engineering Services
Electrical Engineering Services
Programming
Cost Estimating
Multiple preliminary designs
Graphic project renderings for public display at the conclusion of Schematic Design and Construction Documents phases
Confirmation of Measured drawings provided by EPISD
Confirmation of Existing facilities surveys provided by EPISD
Building information modeling
Furniture layout, based on the furniture standard to be provided by EPISD
Landscape design
Site Evaluation and Planning
Architectural Interior Design
Life-Cycle Cost Analysis
On-site project representation/Construction Administration
As-Designed Record drawings
Post occupancy support and warranty phase services
Coordination of Owner's consultants
Telecommunications/data design limited to pathways and locations (excludes cabling and equipment)
Security Evaluation and Planning
Basic Commissioning as required by code; Include commissioning guidelines and specifications for testing.
Land Surveying – Reimburse Architect as set forth below
Exterior Envelope and Roofing Consultant – Reimburse Architect as set forth below
Geotechnical Consultant – Reimburse Architect as set forth below
Geotechnical Reports -- Reimburse Architect as set forth below
Kitchen Consultant, as required per the scope of work
Early Release Package(s) (ERP) or multiple Construction Documents packages as needed to meet the Project Schedule
Architect shall provide two large professionally framed rendering or photos of each project, at no additional cost

ARCHITECT's proposal dated September 27, 2023, is included herein and incorporated into this Agreement, except to the extent that it may conflict with OWNER's Standard General Services Agreement for Architect Services form, in which case the latter shall govern.

ARCHITECT shall submit monthly statements with supporting invoices attached for Basic, Additional and Further Additional Services rendered and for Reimbursable Expenses incurred.

Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, limited as follows:

.1 Fees paid for securing approval of authorities having jurisdiction over the Project;
.2 Reproduction of documents for bidding as determined by the Owner.
.3 Courier services, handling and delivery;
.4 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.5 Land Surveying, Geotechnical Consultant and Geotechnical Reports are all part of the Architects Basic Services to be reimbursed to Architect; the following lump sum fees are estimates of such costs:

Land Surveying – Lump Sum Fee $ n/a
Geotechnical Consultant & Report – Lump Sum Fee $ n/a

.6 The Owner agrees to provide in the contract for an allowance of $50,000 for an Exterior Envelope and Roofing Consultant as required by Owner for any special roofing or re-roofing components or systems.

Notwithstanding any provision to the contrary, services made necessary as a result of the Architect's failure to timely provide accurate or complete information, approvals or clarifications, or to timely render a decision, shall be considered Basic Services.

EXHIBIT "B" TO GENERAL SERVICES AGREEMENT
ADDITIONAL SERVICES

ARCHITECT shall provide for OWNER under Section 2, the following Additional Services in accordance with the terms and conditions of this Agreement:

To be determined on a project-by-project basis based on scope of Work.

HOURLY RATE SCHEDULE

Principal	$200	/hr.
Senior Engineer	$150	/hr.
Project Engineer/Project Manager	$150	/hr.
Designer/Graduate Engineer/EIT	$135	/hr.
Cost Estimation (Opinion of Probable Construction Cost)	$n/a	/hr.
BIM/CAD Technician	$125	/hr.
Administrative Assistant (Clerical)	$90	/hr.

Additional Services, when authorized and approved by the Executive Director Planning & Innovative Schools Construction, in writing and prior to the Additional Services being rendered, shall be paid for in accordance with a mutually agreed upon lump sum or a schedule based on either unit prices or an hourly rate.

Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. All services under the terms of this Agreement which would otherwise be constructed as Additional Services will be treated as Basic Services compensated under for which no additional compensation is authorized, unless such services are requested in writing by the Architect and approved in writing by the Owner prior to the time such services are performed.

Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a substantial change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work;

.2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations that were not or could not have been reasonably anticipated by the Architect;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 If the owner approves an alternate to be bid then the architect will be paid the respective design fee whether or not the alternate is accepted and constructed. If the alternate is not accepted, the architect will not be paid for the construction administration portion of the fee; or

.6 Consultation concerning replacement of Work resulting from fire or other cause during construction.

EXHIBIT "C" TO GENERAL SERVICES AGREEMENT
METHODS OF COMPENSATION
DETAILED FEE BREAKDOWN

Based on the method of compensation selection in Section 3, ARCHITECT shall be paid for all Basic Services authorized by the OWNER in accordance with the terms of this Agreement and as outlined in ARCHITECT's proposal dated September 13, 2023, and attached to this Agreement.

If the method of compensation is a stipulated sum or percentage of the Final Construction Cost of the Project, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

Commissioning Plan Phase 50% review	Fifteen percent	15%
Pre-Functional Commissioning Phase	Twenty percent	20%
Functional Commissioning Phase	Thirty percent	30%
Commissioning Report Phase	Twenty percent	20%
Occupancy Commissioning Phase	Ten percent	10%
12-Month Warranty Period	Five Percent	5%
Total Basic Compensation:	One Hundred percent	100%

ARCHITECT shall be paid at the conclusion of each phase, including the interim reviews during the Construction Documents phase, as determined by OWNER, for Basic Services rendered. Construction phase services shall be paid proportionate to the contractor's application and certificate of payment.

Notwithstanding the payment schedule described herein, ARCHITECT shall submit to Owner monthly statements with supporting invoices attached for Basic, Additional and Further Additional Services rendered and for Reimbursable Expenses incurred. Unless otherwise agreed, payments for Reimbursable Expenses incurred shall be made monthly upon presentation of Architect's invoice.

Any amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate stated in the Texas Prompt Payment Act, TEXAS GOVERNMENT CODE, Chapter 2251.

EXHIBIT "D" TO GENERAL SERVICES AGREEMENT
"D-1" INITIAL INFORMATION FOR PROJECT SCHEDULE

ARCHITECT shall complete documents for the Project within the following number of days after receiving the Notice to Proceed.

Phases	Completion Time
Pre-Functional Commissioning Phase	313 Calendar Days
Functional Commissioning Phase	30 Calendar Days
Commissioning Report Phase	7 Calendar Days
Occupancy Commissioning Phase	14 Calendar Days
12-Month Warranty Period	73 Calendar Days

OWNER will issue a written Notice to Proceed at the start of the project.

Should the Architect fail to deliver the 100% complete Commissioning Report for the Project by the deadline above for the Commissioning Report Phase, the Architect shall be liable for and shall pay or allow offset by the Owner from amounts to be paid to the Architect, the sum of FIFTY AND 00/100 DOLLARS ($50.00) for each day following the deadline until the 100% complete Commissioning Report for the Project are delivered.

Initial term is for the Project.

EXHIBIT "D" TO GENERAL SERVICES AGREEMENT
"D-2" INITIAL INFORMATION FOR PROJECT BUDGET

The Construction Cost Limitation for this Project shall be $0.00, which represents the maximum amount of funds the Owner has budgeted for this Project, which such amount is defined in section 5.2 of the Standard Provisions of this Agreement to include a bidding contingency of 10% unless another amount is agreed upon in writing.

General Project Description (including commencement dates and substantial completion dates):

Commissioning services for the HVAC Upgrades to 21 campuses that were separated into four groups under the EPISD HVAC Replacement in High Occupancy Areas of Middle and High Schools. The conversion location is limited to Main Gyms, Auxiliary Gyms, and/or cafeterias/kitchens.
The substantial completion for groups 1 and 2 is July 31, 2024, and for groups 3 and 4 is Aug 31, 2024.
Below is the overall construction schedule per group and area.

Building Commissioning for the Project, which shall be completed within thirty (30) days of expiration of warranty period, unless extended by mutual agreement of the parties.

Construction Cost Limitation: $0.00

(In the event the Project includes multiple sub-projects, possibly separate out cost for each sub-projects arriving at the cumulative CCL for the entire Project as well as the commencement and substantial completion dates for each sub-project.)

ESSER HVAC UPGRADES - OVERALL SCHEDULE

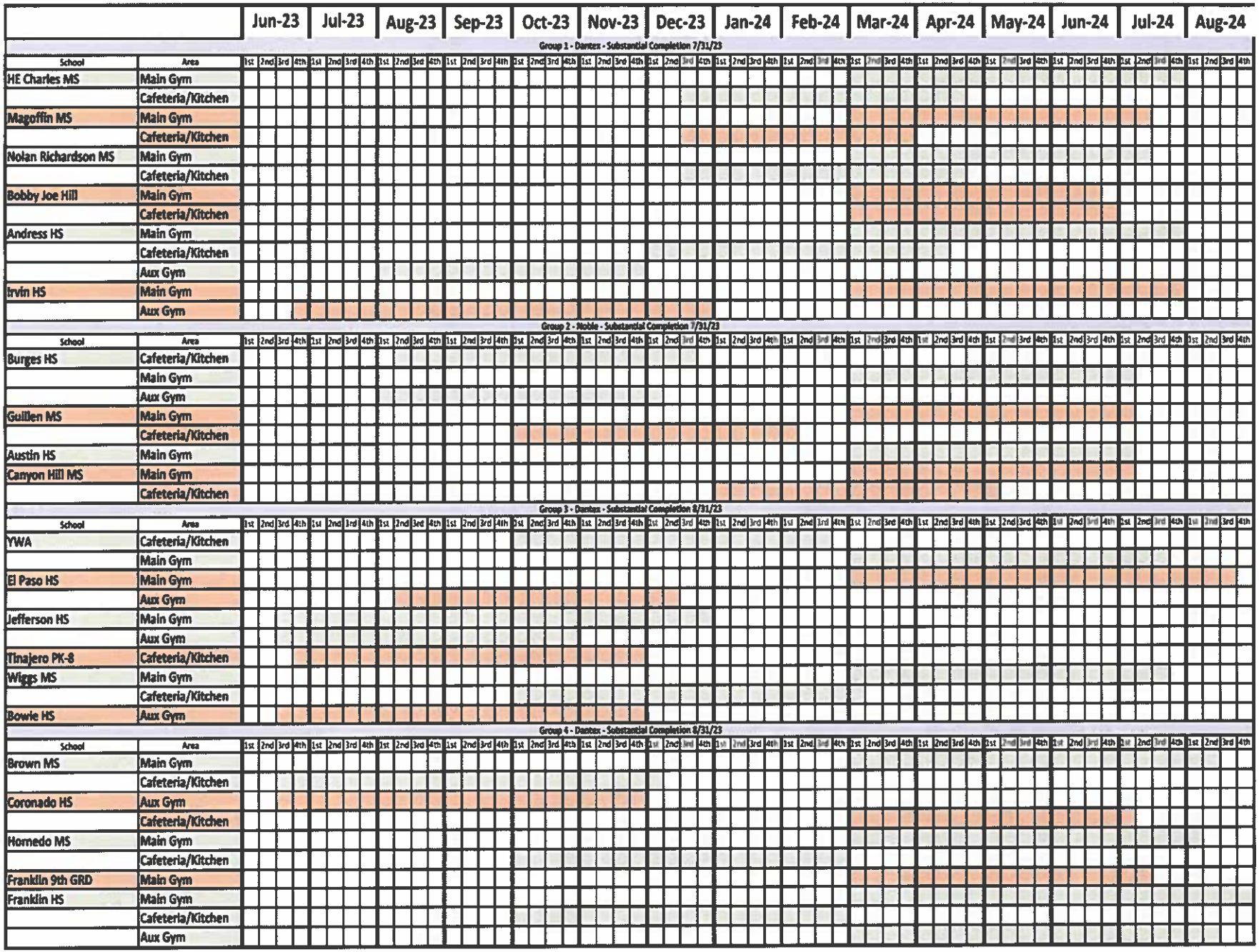


EXHIBIT "D" TO GENERAL SERVICES AGREEMENT
"D-3" INITIAL INFORMATION FOR PROJECT SCOPE

ESSER RFQ 22-013 HVAC Replacement in High Occupancy Areas and High Schools. The following is the list of schools that are included:

- Charles MS – Main Gym and Cafeteria/Kitchen
- Magoffin MS – Main Gym and Cafeteria/Kitchen
- Richardson MS – Main Gym and Cafeteria/Kitchen
- Terrace Hills MS – Main Gym and Cafeteria/Kitchen
- Andress HS – Main Gym, Aux. Gym, and Cafeteria/Kitchen
- Irvin HS – Main Gym and Aux. Gym
- Canyon Hills MS – Main Gym and Cafeteria/Kitchen
- Austin HS – Main Gym
- Burges HS – Main Gym, Aux. Gym, and Cafeteria/Kitchen
- Guillen MS – Main Gym and Cafeteria/Kitchen
- Armendariz MS/YWA – Main Gym and Cafeteria/Kitchen
- Tinajero/Henderson MS – Cafeteria/Kitchen
- Wiggs MS – Main Gym and Cafeteria/Kitchen
- Bowie HS – Aux. Gym
- El Paso HS – Main Gym and Aux. Gym
- Jefferson HS – Main Gym and Aux. Gym
- Brown MS – Main Gym and Cafeteria/Kitchen
- Hornedo MS – Main Gym and Cafeteria/Kitchen
- Coronado HS – Aux. Gym and Cafeteria/Kitchen
- Franklin HS – Main Gym, Aux. Gym, and Cafeteria/Kitchen
- Franklin 9th Grade Ctr – Main Gym

Project Scope:

Commissioning services for the HVAC Upgrades to 21 campuses that were separated into four groups under the EPISD HVAC Replacement in High Occupancy Areas of Middle and High Schools. The conversion location is limited to Main Gyms, Auxiliary Gyms, and/or cafeterias/kitchens.

Construction Phase

1. Perform any tasks and functions in the specifications ascribed to the commissioning agent.

2. Coordinate and direct the commissioning activities in a logical, sequential and efficient manner using consistent protocols and forms, centralized documentation, clear and regular communications and consultations with all necessary parties, frequently updated timelines and schedules and technical expertise.
3. Coordinate the commissioning work with the contractor and construction manager, to ensure that commissioning activities are being incorporated into the master schedule.
4. Revise, as necessary, the construction phase commissioning plan developed during design, including scope and schedule.
5. Plan and conduct commissioning meetings as needed and distribute minutes.
6. Request and review additional information required to perform commissioning tasks, including O&M materials, contractor start-up and checkout procedures. Before startup, gather and review the current control sequences and interlocks and work with contractors and design engineers until sufficient clarity has been obtained, in writing, to be able to write detailed testing procedures.
7. Review normal Contractor submittals applicable to systems being commissioned for compliance with commissioning needs, concurrent with the A/E reviews.
8. Review coordination drawings to ensure that trades are making a reasonable effort to coordinate.
9. Write and distribute construction checklists for commissioned equipment.
10. Develop an enhanced start-up and initial systems checkout plan with contractors for selected equipment.
11. Perform site visits, as necessary, to observe component and system installations. Attend selected planning and job-site
    meetings to obtain information on construction progress. Review construction meeting minutes for revisions/substitutions
    relating to the commissioning process. Assist in resolving any discrepancies.
12. Perform the following pre-functional tasks:
    a. Witness HVAC piping pressure test and flushing, sufficient to be confident that proper procedures were followed. Include testing documentation in the Commissioning Record.
    b. Witness any ductwork testing and cleaning sufficient to be confident that proper procedures were followed. Include documentation in the Commissioning Record.
    c. Document construction checklist completion by reviewing completed construction checklists and by selected site observation.
    d. Document systems startup by reviewing start-up reports and by selected site observation.
    e. Approve air and water systems balancing by spot testing and by reviewing completed reports and by selected site observation.

13. With necessary assistance and review from installing contractors, write the functional performance test procedures for equipment and systems. This will include manual functional testing, energy management control system trending and may include stand-alone data logger monitoring.

14. Coordinate, witness and document manual functional performance tests performed by installing contractors. Coordinate retesting as necessary until satisfactory performance is achieved. The functional testing shall include operating the system and components through each of the written sequences of operation, and other significant modes and sequences, including startup, shutdown, unoccupied mode, manual mode, staging, miscellaneous alarms, power failure, security alarm when impacted and interlocks with other systems or equipment. Sensors and actuators shall be calibrated during construction check listing by the installing contractors, and spot-checked by the commissioning provider during functional testing. Analyze functional performance trend logs and monitoring data to verify performance.

    a) Tests on respective HVAC equipment shall be executed, if possible, during both the heating and cooling season. However, some overwriting of control values to simulate conditions shall be allowed. Functional testing shall be done using conventional manual methods, control system trend logs, and read-outs or stand-alone data loggers, to provide a high level of confidence in proper system function, as deemed appropriate by the commissioning provider and the Owner.
15. Prepare test plans for, assist with execution of, and document tests of commissioned equipment overseen by regulatory

authorities and ensure that such tests meet the testing rigor desired by the Owner.

16. Maintain a master issues log and a separate record of functional testing. Report all issues as they occur directly to the Owner's Representative. Provide directly to the Owner's Representative written progress reports and test results with recommended actions.
17. Review equipment warranties to ensure that the Owner's responsibilities are clearly defined.
18. Oversee and review the training of the Owner's operating personnel.

a) Oversee the videotaping of this training.
b) Review the creation of a classroom "owner's manual" that is to be kept in the classroom.
c) Review the preparation of the O&M manuals for commissioned equipment.

19. Compile a Commissioning Record, which shall include:

a) A brief summary report that includes a list of participants and roles, brief building description, overview of commissioning and testing scope, and a general description of testing and verification methods. For each piece of commissioned equipment, the report should contain the disposition of the commissioning provider regarding the adequacy of the equipment, documentation and training meeting the contract documents in the following areas:
    i. Equipment meeting the equipment specifications,
    ii. Equipment installation,
    iii. Functional performance and efficiency,
    iv. Equipment documentation, and
    v. Operator training.

b) All outstanding non-compliance items shall be specifically listed. Recommendations for improvement to equipment or operations, future actions, commissioning process changes, etc. shall also be listed. Each non-compliance issue shall be referenced to the specific functional test, inspection, trend log, etc. where the deficiency is documented.

c) Also included in the Commissioning Record shall be the issues log, commissioning plan, progress reports, submittal and O&M manual reviews, training record, test schedules, construction checklists, start-up reports, functional tests, and trend log analysis.

20. Compile a Systems Manual that consists of the following: Owner's Project Requirements (by owner); Design Narrative and Basis of Design (by designer); Performance Metrics, if completed during design; space and use descriptions, single line drawings and schematics for major systems (by designer); control drawings, sequences of control (by contractor); and a table of all setpoints and implications when changing them, schedules, instructions for operation of each piece of equipment for emergencies, seasonal adjustment, startup and shutdown, instructions for energy savings operations and descriptions of the energy savings strategies in the facility, recommendations for recommissioning frequency by equipment type, energy tracking recommendations, and recommended standard trend logs with a brief description of what to look for in them (all by commissioning provider).

Warranty Period

1. Return to the site at 10 months into the 12 month warranty period and review with facility staff the current building operation and the condition of outstanding issues related to the original and seasonal commissioning. Also interview facility staff and identify problems or concerns they have with operating the building as originally intended. Make suggestions for improvements and for recording these changes in the O&M manuals. Identify areas that may come under warranty or under the original construction contract. Assist facility staff in developing reports and documents and requests for services to remedy outstanding problems.

EXHIBIT "E" TO GENERAL SERVICES AGREEMENT
INSTRUCTIONS TO DESIGNERS

The ARCHITECT'S Basic Services consist of the phases described in the Agreement and as further described herein. Basic services shall include the normal services of the ARCHITECT and normal complementary or supplementary services of his Consultants. Review Documents of each phase shall be submitted to the Project Manager for their review. ARCHITECT shall not proceed to any subsequent phases until the requisite written comments are received and until authorized by the Project Manager in writing to so proceed.

Conflicts:
In case of conflict(s), the Agreement takes precedent.

1.0 TECHNOLOGY PLATFORMS

1.1 BIM (Building Information Modeling) (Only if utilized by the ARCHITECT for this Project)

Should ARCHITECT choose to utilize BIM for this project, the following rules apply:

1. Software – Autodesk® Revit® Architecture building design software
2. At Programming Phase provide the Revit® Template that will be used with the project – provide detail for all custom families, associated fonts, etc.
3. BIM Submittals – Full model and backup at each phase (SD, DD, CD's and record documents)
4. Provide narrative documentation explaining the elements, templates, families, and any special conventions used – provide detail for any changes to the standard object visibility / graphics elements

1.2 OwnerInsite Converge

Project Manager will implement OwnerInsite Converge as the primary tool of the Project Management Control System (PMCS). The intent is to improve project work efforts by promoting timely and efficient communications and to reduce the number of paper documents. ARCHITECT will be required to utilize OwnerInsite Converge for the following document types:

a) Requests for Information (RFIs)
b) Submittals
c) Transmittals
d) Applications for Payment
e) Field Reports
f) Other document types as assigned by Project Manager

Project Manager will provide ARCHITECT access to OwnerInsite Converge at no cost.

1.2 Microsoft SharePoint

Project Manager will implement a Microsoft SharePoint environment as the primary document server as part of the PMCS. ARCHITECT will be required to upload and maintain documents within this environment, which will include the following document types:

a) Meeting Minutes
b) Photographs
c) Drawings
d) Supplemental Sketches
e) Schedules
f) Specifications
g) Other document types as assigned by Project Manager

Project Manager will provide ARCHITECT access to the Microsoft SharePoint environment at no cost.

1.2 BlueBeam Revu

To standardize the document review process, ARCHITECT will be required to utilize BlueBeam Revu as the document design review platform for preparing and addressing all design review comments. ARCHITECT will submit design documents for review in BlueBeam Revu-compatible format and respond to comments within the BlueBeam Revu platform. ARCHITECT will need to purchase licenses for the use of this commercial product.

2.0 PROGRAMMING PHASE

2.1 General

The completed Programming Document consists of the Design Program, Site Analysis, Budget Analysis, Time Schedule, and Consultant Reports, if any, and shall be submitted to the Project Manager for review and thereafter only the Owner shall have the authority to alter the Program Document; any such change shall be in writing.

2.2 Design Program

The ARCHITECT shall review the Educational Specifications and/or the Facility Condition Analysis report provided by the Project Manager, meet with the Project Manager to determine more detailed program requirements for the project, and complete the Design Program to the satisfaction of the Owner.

2.3 Site Analysis

The ARCHITECT shall conduct a Site Analysis to determine the ability of the site to support the proposed facility. The Site Analysis shall consider and report on the following site characteristics:

a) Zoning
b) Drainage
c) Sewer
d) Traffic
e) Soils
f) Environmental
g) Flood Elevation / Flood Plain
h) Potable Water Capacities (pressure tests)
i) Fire Protection Capacities (pressure tests)
j) Power
k) Gas
l) Telephone
m) Cable Television

Each site characteristic shall be identified and analyzed to determine its ability to support the proposed project. Where an element is inadequate, an estimate shall be made by the ARCHITECT to determine the cost and schedule impact to the project.

2.4 Budget Analysis

Based on the final building design program and site analysis, the ARCHITECT shall determine whether the funds available for construction are realistic for the project. If the funds are not satisfactory, the ARCHITECT shall notify the Project Manager immediately, with justification of his/her position.

2.5 Project Time Schedule

Based on the design program and the findings in the site analysis, the ARCHITECT shall update the project time schedule. The schedule shall include specific milestones for design submittals based on the design phases identified in the contract, Project Manager reviews, bidding, construction, Owner installed equipment and Owner occupancy.

2.6 Specialty Consultants

2.6.1 *Geotechnical Engineer*

The ARCHITECT shall provide its Geotechnical Engineer the number, location and depth of the required geotechnical borings, and other information as necessary to provide a comprehensive geotechnical report as necessary for the ARCHITECT to design the Project. The completed geotechnical report shall be provided to the Owner as a deliverable.

2.6.2 *Site Survey*

The Topographic, Utility and Boundary Survey shall be provided by the ARCHITECT. The ARCHITECT shall review the physical site characteristics as documented by the topographical survey and determine the design, cost and schedule impact to the project. The completed Topographic, Utility and Boundary Survey shall be provided to the Owner as a deliverable.

2.7 Submittals

In addition to a PDF file copy, three hard copies of the Program Document shall be submitted to the Project Manager. The document shall be in **8 1/2 x 11**" format and bound in a three-ring binder with tabs dividing the program elements. Copies of surveys or other drawings may be **11" x 17"** folded and bound to fit in addition to PDF format. The Completed Program shall consist of the following elements:

a) Preliminary Scope/Narrative
b) Preliminary Design
    i. Space Requirements (Scale Study)
    ii. Area Reconciliation (Spread Sheet Comparison)
    iii. Functional Adjacencies (Relationship)
c) Diagrammatic space layouts including
    i. Main Office location
    ii. Registrar, Counselor, Health etc. office locations
    iii. Classrooms, Science, Music, PE, Etc.
d) Proposed Building Systems
e) Preliminary Estimate of Construction Cost
f) Project Timeline
g) Site Analysis
h) Geotechnical Report and Topographic, Utility, and Boundary Survey
i) Historical Review Documentation (if applicable)

3.0 SCHEMATIC DESIGN PHASE

3.1 General

Based on the approval by the OWNER for the Programming Phase, the ARCHITECT shall prepare Schematic Design Documents. The schematic documents shall be in such format and detail as required by the Project Manager, consisting of drawings, outline specifications and other documents illustrating the general scope, scale, and relationship of the Project components for the review of the Project Manager.

3.2 Architectural Design/Documentation

Services during the Schematic Design Phase shall consist of the investigation and development of design concepts that respond to the program requirements, provide optimal utilization of the site and meet the schedule and cost limitations of the project. Environmentally responsible design approaches shall be considered. Include in the design documentation narrative:

a) Programmed functions, occupancies and floor areas associated with each (area tabulations);
b) Building classification and applicable codes;
c) Furniture planning considerations;
d) Site characteristics;
e) Landscaping;
f) Building orientation and interaction with site;
g) Shell components description –walls, floor, roofs, windows;
h) Energy efficiency features of the design;
i) Daylighting considerations;
j) Green Building Program features;

3.3 Structural Design/Documentation

Services during the Schematic Design Phase shall consist of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for a structural system with a proposed grid layout.

3.4 Civil Design/Documentation

Consideration of alternate materials and systems and development of conceptual design solutions for

a) On-site utility systems
b) Off-site utilities work
c) On-site Storm Water Drainage Systems
d) Off-site Storm Water Drainage Improvements
e) Paving & Grading
f) Vehicular & Bus Access to the site.
g) Environmental
h) FEMA Floodplain considerations

3.5 Mechanical Design/Documentation

Consideration of alternate materials and systems and development of conceptual design solutions for:

a) Energy Source(s)
- Applicable utility incentives
- Green Building Program
- Energy efficiency features of design
- Envelope considerations and special loads

b) Energy Conservation

c) Heating, Ventilation and Air-Conditioning
- Outdoor and indoor design conditions;
- Considerations for selection of HVAC system type(s);
- Proposed cooling and heating systems descriptions;
- Special Mechanical Systems
- General Space Requirements for Mechanical Equipment
- Building Automation System
- Indoor air quality considerations

d) Plumbing
- Applicable codes and design standards;
- Utility services –water, sanitary, storm, gas, fire water; Domestic hot water system;
- Building plumbing needs,
  - system descriptions
  - materials
  - fixture types
- Irrigation needs and system descriptions
- Energy efficiency features of design
- Water conservation features of design
- Green Building Program
- Applicable utility incentives
- Special systems –rainwater collection, gray water recycling

e) Fire Protection. Flow tests on projects containing sprinkler installations shall be performed during the schematic design phase of projects to ensure that adequate water pressure and flow quantities are available for all buildings included in the project.

f) Applicable codes and design standards

g) Zoning considerations

3.6 Electrical Design/Documentation

Narrative defining consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual design solutions for:

a) Power Service and Distribution
- Applicable codes and design standards
- Electric utility service
- Energy efficiency features of design
- Electrical power distribution system
- Green Building Program
- Applicable utility incentives
- List Energy Conservation Measures that will be considered

b) Lighting (types of fixtures, illumination levels, color temperature, CRF, CRI, etc.)
- Interior lighting systems
  - illumination levels
  - light sources
  - controls
  - egress lighting
  - power density calculations
  - daylighting
- Exterior lighting systems

- illumination levels
- light sources
- controls
- power density calculations

c) Any required Special Systems such as CATV/CCTV Distribution, Fire Alarm, Intercom/Paging, Lightning Protection, Security, Telecommunications Distribution
d) Electrical Equipment Room Space, Quantity, Location, and Environment Allocations for all of the above
e) Outline Plans and Specifications that include the items in this list
f) List Energy Conservation Measures that will be considered

3.7 Specifications

The ARCHITECT shall prepare outline specifications in CSI MasterFormat 2016 edition format to adequately describe the building design and selection of building systems and materials.

3.8 Detailed Code Analysis

The ARCHITECT shall prepare a detailed code analysis of the proposed building based on the applicable codes. The project will be permitted in the local municipality having jurisdiction or the county and will be subject to all current applicable codes and ordinances including the Fire Marshal's Office and Texas Department of State Health Services.

3.9 Preliminary Estimate of Construction Cost

The ARCHITECT shall submit to the Project Manager a Preliminary Estimate of Construction Cost.

3.10 Project Time Schedule

Based on the schematic design, the ARCHITECT shall update the project time schedule. The schedule shall include updates to specific milestones for design submittals based on the design phases identified in the contract, Project Manager reviews, bidding, construction, Owner installed equipment and Owner occupancy.

3.11 Sustainable Design

The ARCHITECT shall incorporate sustainable or green building design concepts into the project when feasible.

3.12 Graphical Renderings

The ARCHITECT shall submit in digital format, renderings of the Project, suitable for public display on Owner's website and other print material, detailing the key elements of the Project in consultation with the Project Manager.

3.13 Submittals

In addition to a PDF file copy, three hard copies of the Schematic Design Documents shall be submitted to the Project Manager for review.

a) Drawings (one full size **24x36** and two **11x17**)
   i. Overall Site Plan
   ii. Floor Plans
   iii. Exterior Elevations
   iv. Preliminary Building and Wall Sections
   v. Exterior Perspective Sketches
b) Outline Specifications
c) Statement of Probable Cost
d) Structural Design Narrative
e) Mechanical Design Narrative
f) Electrical Design Narrative
g) Civil Design Narrative
h) Project Timeline
i) Area Reconciliation (Spread Sheet Comparison)
j) Historical Review Documentation (if applicable)

4.0 DESIGN DEVELOPMENT PHASE

4.1 General

Based on the approved Schematic Design Documents, the ARCHITECT shall prepare for review by the Project Manager, the following documents, all sufficiently complete and clear to define the quantity and quality of the work. Design documents shall be submitted to the local and state authorities having jurisdiction for preliminary review.

4.2 Preliminary Estimate of Construction Cost

The ARCHITECT shall submit to the Project Manager an updated Preliminary Estimate of Construction Cost based on the Construction Specifications Institute's 2016 MasterFormat format with back-up material.

4.3 Specifications

The ARCHITECT shall prepare specifications in CSI 2016 MasterFormat edition format for all equipment and special systems for review and approval by the Project Manager.

4.4 Submittals

In addition to a PDF file copy, three hard copies of the Design Development Documents shall be submitted to the Project Manager for review.

a) Specifications with cut-sheets for all equipment and special systems.
b) Area Reconciliation (Spread Sheet Comparison)
c) Drawings (one full size **24x36** and two **11x17**)

i. Dimensioned Overall Site Plan
ii. Site Grading and Drainage Plan
iii. Site Paving Plan
iv. Floor Plan(s)
v. Reflected Ceiling Plan
vi. Furniture Layout Plan
vii. Room Finish Schedule
viii. Exterior Elevations
ix. Key Interior Elevations
x. Building and Wall Sections
xi. Foundation Plan
xii. Structural Framing Plan
xiii. HVAC Plan
xiv. Plumbing Plan
xv. Electrical Power Plan
xvi. Lighting Plan

5.0 CONSTRUCTION DOCUMENT PHASE

5.1 General

Based on the approved Design Development Documents, the ARCHITECT shall prepare for review and approval by the Project Manager and other State and Local Regulatory Agencies as required by law, the following documents bearing the ARCHITECT's seal and those of his consultants, all sufficiently complete to define the quantity and quality of the work to bid and build the Project. This phase will not be approved by the Project Manager without the ARCHITECT acquiring all required permit approvals.

5.2 Drawings

Dimensioned plans, elevations, sections, details and/or schedules of all architectural, civil, landscaping, structural, mechanical, electrical, food service and other equipment and interior design work required for a completely functional Project.

5.3 Technical Specifications

Identification of the materials, processes or systems to be incorporated in the work, using the MasterFormat 2016 edition format of the Construction Specifications Institute.

5.4 Bidding and Construction Contract Forms

The Project Manager will furnish to the ARCHITECT policy requirements that the ARCHITECT must include in his Documents including the following: Advertisement for Bids, Instructions to Bidders, Bid Form, General Conditions, Supplementary General Conditions, Agreement between Owner and Contractor, Performance and Payment Bond, Non-Collusion Affidavit, and other forms used by the Owner.

5.5 Preliminary Estimate of Construction Cost

The ARCHITECT shall submit to the Project Manager an updated Preliminary Estimate of Construction Cost based on the MasterFormat 2016 edition format of the Construction Specifications Institute with back-up material. If the ARCHITECT's cost estimate is more than the funds budgeted, the project will not be advertised. ARCHITECT shall provide construction documents that meet the program/design intent, and that is within the funds budgeted.

5.6 Plan Review Pre-Conference

The ARCHITECT shall at least ninety (90) days prior to the completion of the construction documents set arrange and attend a meeting with the City for the purpose of informing the city of the proposed construction projects and to receive direction regarding potential and or anticipated code compliance issues in the preparation of the plans and specification.

5.6.A Preliminary Plan Review

During the design phase of a project, the ARCHITECT shall respond to code issues raised by the applicable city department pertaining construction code compliance, traffic, driveway and parking lot layout, fire protection, landscaping, trees, historic preservation, drainage, storm water detention and floodplain, platting, zoning, utility extension or upgrades, and other such areas of the city's authority and control.

5.6.B Conditional Building Permits

It is not acceptable for the ARCHITECT to request a Conditional or Limited Building permit from the city.

5.6.C Portable Buildings

A building permit shall be obtained from the City prior to moving and setting any portable building. This work shall be included in the preliminary plan review.

5.7 Design Calculations

The ARCHITECT shall submit one bound copy of all design calculations on the Project. The Project Manager will not review or comment on the design calculations for engineering integrity. This shall be the sole responsibility of the ARCHITECT.

5.8 Ductwork Design Calculations

The ARCHITECT shall include in the construction contract or separate construction contract, a requirement to pressure test the ductwork for mechanical systems where replacement is necessary. Provide the results and engineering analysis of the results of this test to the Project Manager.

5.9 Graphical Renderings

The ARCHITECT shall submit in digital format, renderings of the final Project, suitable for public display on Owner's website and other print material, detailing the key elements of the Project in consultation with the Project Manager.

5.10 Furniture Layouts

The ARCHITECT shall include in the Construction Documents coordination layouts of the furniture to be provided by OWNER. OWNER will provide ARCHITECT with a listing of the furniture types intended to be standardized across the Program.

5.11 Submittals

In addition to a PDF file copy of each, at ARCHITECT's expense:

One full size (24x36) set of drawings of the 50% Progress Construction Documents shall be submitted to the Project Manager for review. One copy of the project manual shall be submitted.

One full size (24x36) set of drawings of the 95% Progress Construction Documents shall be submitted to the Project Manager for review. One copy of the project manual shall be submitted.

One full size (24x36) and two 11x17 copies of the final Construction Documents shall be submitted to the Project Manager. One copy of the project manual shall be submitted.

The ARCHITECT shall prepare and submit one color board for the owner's use indicating the color selections/recommendations for all interior and exterior finishes.

6.0 BIDDING AND NEGOTIATION PHASE

6.1 General

Upon review of the Project Manager and approval of Local and State Permitting regulatory agencies, receipt of corrected and completed Construction Documents and approval of the latest Preliminary Estimate of Construction Cost, the Project Manager may advertise the Project for bids and shall be assisted by the ARCHITECT in obtaining and evaluating bids. No project will be advertised unless approval has been received from the authorities having jurisdiction.

6.2 Final Estimate of Construction Cost

The ARCHITECT shall submit to the Project Manager an updated Estimate of Construction Cost based on the 2016 MasterFormat edition of the Construction Specifications Institute with back-up material within thirty (30) days prior to the first date of advertisement for bids. The project will not be advertised if the ARCHITECT's Estimate of Construction Cost exceeds the fixed Construction Cost Limitation unless approved in writing by the Project Manager.

6.3 Prior Approvals, Addenda, Pre-bid Conference, and Bid Opening

The ARCHITECT shall be responsible for evaluating prior approval requests for substitution of materials, products and equipment required by the applicable statutes and Owner Procedures.

The ARCHITECT shall prepare and issue all addenda, in accordance with the Contract Documents, as required to modify or clarify the Construction Documents. Items not included in the approved program and/or items previously rejected or not approved shall not be included in any addendum without Project Manager's approval.

All addenda will be issued with prior approval from the Project Manager.

The ARCHITECT shall conduct a pre-bid conference in accordance with the Contract Documents, coordinated through the Project Manager.

Unless waived by the Project Manager, the ARCHITECT shall be present for the opening of bids by the Project Manager and shall assist the Owner in tabulating the bids.

7.0 CONSTRUCTION ADMINISTRATION PHASE

7.1 General

The ARCHITECT shall provide administration of the Construction Contract as set forth in the Agreement and as described herein and in the Construction Documents. The ARCHITECT, as the representative of the Owner during the Construction Phase, shall advise and consult with the Owner through the Project Manager and communicate all instructions to the Contractor in writing.

7.2 Testing

The Owner shall engage and pay for the services of an independent testing laboratory to perform inspection and tests of materials and construction as defined in the General Conditions, including Test and Balance services.

7.3 Notices, Reports & Meetings

7.3.1 *Pre-Construction Conference*

After the execution of the Construction Contract, the Project Manager will issue a Notice to Proceed to the Contractor. The Project Manager will notify the ARCHITECT to arrange for and conduct a pre-construction conference.

7.3.2 *Weekly Progress Meetings*

The ARCHITECT shall instruct the Contractor to establish and conduct a regular schedule of weekly progress meetings to be held on the job site each week throughout the construction period, and shall require attendance at the meetings by representatives of his principal Consultants. The Project Manager shall be notified of such meetings and will be represented. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance to facilitate and maintain the project schedule and complete the project per the contract. ARCHITECT will be responsible for recording and distributing the minutes from these meetings.

7.3.3 *Monthly Progress Reports*

The ARCHITECT shall prepare and submit to the Project Manager and Contractor a monthly Status Report on the Project. The form of the Report shall be approved by the Project Manager. The ARCHITECT shall submit all field reports (for the month in progress) with this Monthly Progress Report. The ARCHITECT's Status Report shall be submitted to the Project Manager monthly along with the Contractor's Certificate for Payment and ARCHITECT's Invoice for Professional Services.

7.4 Site Observations

The ARCHITECT and his principal consultants shall visit the project as often as necessary to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents. Such visits by the ARCHITECT shall not be less than once per week when the work is in progress. On the basis of the ARCHITECT's on-site observations, he shall endeavor to guard the Owner against defects and deficiencies in the Work of the contractors.

A written report of each visit by the ARCHITECT to the project shall be electronically transmitted to the Project Manager and Contractor within forty-eight (48) hours after each visit. Observation photos shall not include students or faculty.

The ARCHITECT shall give prompt written notice to the Project Manager if the ARCHITECT becomes aware of any fault, defect, error, omission or inconsistency in the project or in the Contract Documents.

7.5 ARCHITECT's Construction Administrator

The ARCHITECT agrees that his designated representatives on the construction project shall be qualified by training and experience to make decisions and interpretations of the Construction Documents and such interpretations shall be binding upon the ARCHITECT as if made by him. All such decisions shall be confirmed in writing immediately with copies to the Project Manager and Contractor conditioned that such decisions and interpretations shall not modify adversely the requirements of the contract documents.

7.6 Certificates of Payment

Based on observations at the site and on the Contractor's Applications for Payment, the ARCHITECT shall determine the amount owing to the Contractor and shall issue to the Project Manager Certificates for Payment in such amounts. Applications for payment shall be reviewed on a monthly basis.

No Certificate of Payment shall be issued until a schedule of values has been submitted by the Contractor, reviewed by the ARCHITECT, and approved by the Project Manager.

The ARCHITECT shall process contractor applications for payment within seven (7) calendar days from the time the certified application is received by the ARCHITECT from the Contractor. The ARCHITECT shall submit the original signed copies to the Project Manager with copies to the Contractor. If a certificate is held up or adjusted for any reason, written notice stating the reasons for the delay or adjustment must be given to the Contractor and Project Manager within seven (7) calendar days. If a certificate is incorrect or has major adjustments, it shall be returned to the Contractor immediately with a written explanation for the return. It is the intent of the Project Manager that the certificates be thoroughly reviewed by the ARCHITECT prior to the weekly progress meeting subsequent the Contractor's submittal (pencil copy review) and adjusted accordingly at the meeting in order to expedite the payment process.

7.7 Shop Drawings and Submittals

The ARCHITECT shall promptly review, as to not cause delays, shop drawings, samples and other submissions of the Contractor for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents.

The ARCHITECT shall maintain one complete set of approved shop drawings to be turned over to the Project Manager at the completion of the project.

The ARCHITECT shall submit for owner approval any changes to the final color selections submitted at the construction documents phase.

7.8 Change Orders

Only with the authorization of the Project Manager, shall the ARCHITECT prepare Change Orders. The ARCHITECT shall obtain from the Contractor his estimate of cost and time changes in accordance with the Contract Documents for the Change Order, review and approve same, and submit it to the Project Manager for review before any changes are made in the Contract. No additional compensation shall be due the ARCHITECT for preparation of Change Orders.

7.9 Contractors Request for Information

The ARCHITECT shall answer each properly-prepared / contractor generated Request for Information (RFI) within seven (7) days after receiving it. The ARCHITECT shall copy all RFI's (with responses) correspondence to the Project Manager. In the event a complete answer cannot be provided within the allotted time frame, a written acknowledgment shall be provided to the Project Manager and contractor. Include in the acknowledgment the anticipated answer time frame.

7.10 Construction Closeout

6.10.1 Substantial and Final Completion

ARCHITECT to comply with the Agreement for procedures relative to issuing substantial and final completion.

6.10.2 Close-out Documents

ARCHITECT shall receive, review and forward to the Project Manager guarantees, operation and maintenance manuals, keys and other close-out documents as required by the Contract Documents. ARCHITECT shall confirm all training required for the local staff for all systems and operations equipment. ARCHITECT shall obtain a written receipt for these and forward same to the Project Manager, together with copies of all guarantees and warranties.

After acceptance of the Project by the Owner, the ARCHITECT shall prepare and furnish to the Project Manager:

a) A Final Report in the format and containing information as required by the Project Manager,
b) One set of Record Drawings (As-Builts) prepared by the ARCHITECT in an archival format.
c) Electronic version of the Record Drawings in the latest Autodesk® format. The Record Drawings shall be prepared on the basis of information furnished by the Contractor and the change orders and shall be reviewed with and approved by the Contractor prior to submission. Provide a PDF set of documents also.
d) ARCHITECT shall inspect and approve completion of "punch-list" items remaining after acceptance and shall certify final payment to the Contractor.

7.11 One-Year Correction Period Phase

The ARCHITECT shall be required to follow up on items to be corrected during the "one-year correction period" and shall arrange for and conduct inspections as per the Agreement. The ARCHITECT shall be required to inform the Project Manager and Contractor of any items to be corrected and shall inspect the Project as required until the work is completed, without additional compensation.

ARTICLE 1
ARCHITECT'S GENERAL RESPONSIBILITIES

1.1. ARCHITECT is OWNER's independent ARCHITECT for the PROJECT and is responsible for the means and methods used in performing its Services.

1.2. ARCHITECT shall, at its own expense, obtain all data and information (other than that referred to in Article 2 below) necessary for the performance of its Services.

1.3. ARCHITECT shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations orders and other legal requirements including but not limited to all zoning restrictions or requirements of record, building, occupancy, environmental, disabled person accessibility and land use laws, requirements regulations and ordinances relating to the construction use and occupancy of the PROJECT ("Governmental Requirements") existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents. ARCHITECT shall use its best efforts to avoid incorporating into the PROJECT design elements that would give rise to code interpretation questions and to discuss in advance all such situations with the Owner. The ARCHITECT represents to Owner that all Design Documents, Contract Documents and other documents prepared and issued by ARCHITECT pursuant to this Agreement will be of good quality, free from substantial defects, and in conformance with and satisfying all applicable federal, state, municipal and local ordinances, codes, and other governmental requirements and shall be fit for the particular purpose intended thereby. ARCHITECT shall notify the Owner in a prompt and timely manner of any discovered discrepancies inconsistencies or missing information necessary to provide reasonably accurate and complete documents. Failure to so notify Owner will be considered a breach of the standard of professional practice set forth in this Agreement.

1.4. ARCHITECT represents that it is licensed and qualified to perform the Services, and acknowledges that the OWNER is relying exclusively on its expertise, education and experience regarding the performance of the Agreement. ARCHITECT shall be responsible to OWNER through the completion of the PROJECT for all engineering and/or architectural responsibilities of the PROJECT. The ARCHITECT shall perform its services consistent with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional licenses. The ARCHITECT shall be responsible to the Owner for all costs and damages resulting from (1) defects in design, (2) non-workability of design details, (3) failure of the ARCHITECT to comply with the terms of this Agreement, and (4) errors and omissions of the ARCHITECT. Any designs, drawings or specifications prepared or furnished by ARCHITECT that contain errors, conflict or omissions will be promptly corrected by ARCHITECT at no additional cost to Owner. Owner's approval, acceptance use of or payment for all or any part of ARCHITECT's services shall in no way alter ARCHITECT's obligations or Owner's rights hereunder. The ARCHITECT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the PROJECT.

1.5. ARCHITECT shall advise OWNER whether the services of other Architects are necessary for the design of the PROJECT. Upon the written request of the Owner, the ARCHITECT shall remove from the PROJECT any employee of the ARCHITECT to whom the Owner makes a reasonable objection. The ARCHITECT shall replace any such employee with an equally qualified employee in a timely manner.

1.6. ARCHITECT shall obtain written approval for access to enter upon public and private property of third parties as required for the performance of its Services.

1.7. ARCHITECT shall provide, at OWNER's expense, a color facial photo identification badge for all of ARCHITECT's employees working on the PROJECT. The identification badge must include the individual's full name and the name of the company by whom the individual is employed. The photo identification badge must not be smaller than a Texas issued driver's license. A color copy of each badge shall be submitted to Planning, Engineering & Construction along with a list of persons on ARCHITECT's company letterhead referencing the OWNER's PROJECT title and PROJECT number. A second badge will then be issued by Planning, Engineering & Construction with each individual's name, company name, OWNER's PROJECT number and expiration date. ARCHITECT's employees may not begin work on the PROJECT until the badges are issued by OWNER.

1.8. ARCHITECT shall familiarize itself with the federal and Texas legal requirements for public schools, School Facilities Standards established by the Texas Education Agency and OWNER's Facilities Standards to ensure that the PROJECT is designed and constructed in accordance with the federal and Texas legal requirements for public schools and the established School Facility Standards and the OWNER's Facilities Standards ("Facilities Standards"). OWNER will provide ARCHITECT with enrollment

projections, educational specifications, and educational objectives for the PROJECT. ARCHITECT must also ensure that the PROJECT is designed and constructed in accordance with applicable Texas legal requirements for public schools and local and state building codes and regulations existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents. ARCHITECT shall certify that the PROJECT has been designed according to the Facilities Standards and that the PROJECT design complies with the federal and Texas legal requirements for public schools and all applicable construction codes and regulations for the PROJECT. As used in this paragraph, the term "certify" indicates that the ARCHITECT has reviewed all applicable standards and used its best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in preparing and executing the Construction Documents. ARCHITECT's signature and seal on the Construction Documents shall certify compliance. Pursuant to 19 Texas Administrative Code § 61.1036, the ARCHITECT shall sign and seal the Construction Documents and certify on the Certification of PROJECT Completion form developed by the Texas Education Agency as follows:

.1 It has reviewed the standards contained in 19 TAC Chapter 61 and has used the best professional judgment and reasonable care consistent with the practice of architecture in the State of Texas in executing the construction documents and that these documents conform with the provisions of 19 TAC Chapter 61.

.2 It has performed a building code search under applicable regulations that may influence the project and the design has been researched prior to becoming final.

.3 It has designed the facility according to the provisions of 19 TAC Chapter 61 based on the long-range school facility plan and/or education specifications, building code specifications, and all documented changes to the Construction Documents provided by the District.

1.9 The ARCHITECT shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the PROJECT, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a PROJECT benchmark. The ARCHITECT shall be reimbursed by the Owner for the ARCHITECT's cost for such services, noting the estimates for such amount of the lump sum fee has been provided in the General Services Agreement.

1.10 The ARCHITECT shall furnish services of geotechnical engineers as required for the PROJECT which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations. The ARCHITECT shall be reimbursed by the Owner for the ARCHITECT's cost for such services, noting the estimates for such amount of the lump sum fee has been provided in the General Services Agreement.

1.11 The ARCHITECT shall manage the ARCHITECT's services, consult with the Owner, research applicable design criteria, attend PROJECT meetings, communicate with members of the PROJECT team and report progress to the Owner. The ARCHITECT shall assign a partner in the firm for the duration of the project and a license professional will manage the project throughout its duration.

1.12 As soon as practicable after the date of this Agreement, the ARCHITECT shall submit for the Owner's approval a schedule for the performance of the ARCHITECT's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information as set forth in Exhibit D attached to General Services Agreement for Architect Services. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the PROJECT. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the ARCHITECT or Owner. With the Owner's approval, the ARCHITECT shall adjust the schedule, if necessary as the PROJECT proceeds until the commencement of construction.

1.13 The ARCHITECT shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the PROJECT. In designing the PROJECT, the ARCHITECT shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. Any changes required by governmental authorities, if approved by the Owner, shall be made by the ARCHITECT at no additional cost to the Owner.

1.14 The ARCHITECT shall be responsible for filing documents required for the approval of governmental authorities having jurisdiction over the PROJECT, subject to review and approval of the Owner.

1.15 When the services under this Agreement include contract administration services, the General Conditions of the

Contract for Construction shall be General Conditions for Construction Contract for the PROJECT.

1.16 Notwithstanding any other provision of the Agreement, the following are Services of the ARCHITECT fully compensated as Basic Services:

.1 The time period during which the ARCHITECT's duty to provide Basic Services shall include that time necessary to correct any defective work caused by defects, errors or omissions of the ARCHITECT during any phase of construction. Such services shall be performed by the ARCHITECT at no additional charge, either in fee or expenses.

.2 The ARCHITECT shall be responsible for retaining all necessary consultants to execute ARCHITECT's scope of work. Such consultants shall be professionals licensed by the State of Texas to practice the building discipline for which they are retained on the PROJECT. Consultants required by the ARCHITECT shall at a minimum be required to make on-site visits and observations during those periods when work they have designed is being constructed.

.3 The ARCHITECT shall require the Contractor and its subcontractors to maintain a set of record drawings to be furnished to the Owner in reproducible form upon Substantial Completion of the PROJECT. The ARCHITECT shall cause the Contractor to provide all warranty documents and Owner operation manuals required by the Contract Documents. The ARCHITECT shall review the record drawings, warranties, and operation manuals for conformance with the Contract Documents and shall deliver the record drawings, warranties, and operation manuals to the Owner by written transmittal.

.4 The ARCHITECT shall be responsible for reporting all known building deficiencies to the Contractor for a period of one year after the date of Substantial Completion. In addition, the ARCHITECT shall monitor the progress of corrections and furnish the Owner with written notification of completed corrections. The one year period shall be extended to portions of the Work first completed after the date of Substantial Completion by the period of time between Substantial Completion and the actual completion of such Work. The obligations under this Section shall survive acceptance of the Work by the Owner.

1.17 The ARCHITECT shall coordinate its services with those services provided by the Owner and the Owner's consultants. The ARCHITECT shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The ARCHITECT shall provide prompt written notice to the Owner if the ARCHITECT becomes aware of any error, omission or inconsistency in such services or information.

1.18 PROGRAMMING PHASE SERVICES

.1 The Owner will provide ARCHITECT with the Initial Information, which will contain the basic fundamentals of the Project's scope, within the limitations of the Project budget, to include general parameters such as overall building size and function, site placement, and initial phasing.

.2 The ARCHITECT shall, based on the Initial Information, establish the fundamentals of the design program, including: (a) design objectives, limitations and criteria; (b) overall occupancy and specific departmental and room occupancies; (c) space requirements for rooms and departments, including relationship and flow diagrams; (d) attributes for rooms and departments; (e) room and departmental relationships and their relative importance; (f) need for flexibility, phasing and future Project expansion; (g) materials handling requirements (i.e. food, trash, and supplies); (h) need for special equipment and systems; (i) site space and equipment requirements for playgrounds, parking and service zoning; and, (j) orientation considerations (i.e. climatic, energy, views, traffic/parking and safety).

.3 The ARCHITECT shall prepare a preliminary evaluation of the program, schedule, budget for the Cost of the Work, PROJECT site, and the proposed procurement or delivery method and other Initial Information – Project Schedule, each in terms of the other, to ascertain the requirements of the PROJECT. The ARCHITECT shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the PROJECT.

.4 The ARCHITECT shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the PROJECT, including the feasibility of incorporating environmentally responsible design approaches. The ARCHITECT shall reach an understanding with the Owner regarding the requirements of the PROJECT.

.5 Based on the PROJECT's requirements agreed upon with the Owner, the ARCHITECT shall prepare and present for the Owner's approval a preliminary concept design illustrating the scale and relationship of the PROJECT components.

.6 The ARCHITECT shall submit the Programming Documents to the Owner, and request the Owner's approval. ARCHITECT shall not proceed to the Schematic Design Phase without the approval of Owner. ARCHITECT shall bear

full responsibility for, and all resulting excess costs incurred by ARCHITECT in, proceeding without Owner's approval.

.7 The ARCHITECT shall prepare an estimate of Probable Construction Cost in accordance with the terms herein. If the Construction Cost Limitation at the conclusion of the Programming Phase is exceeded by the estimate of Probable Construction Cost by more than 10%, the Owner shall

.1 give written approval of an increase in the budget for the Construction Cost Limitation;

.2 terminate in accordance with this agreement;

.3 in consultation with the ARCHITECT, revise the PROJECT program, scope, or quality as required to reduce the Probable Construction Cost; or

.4 implement any other mutually acceptable alternative.

.8 If the Owner chooses to proceed under Section 1.18.7.3, the ARCHITECT, without additional compensation, shall modify the Programming Documents as necessary to comply with the Owner's budget for the Construction Cost Limitation, or if the Owner chooses to proceed under Section 1.18.7.1, the ARCHITECT shall not be entitled to additional compensation.

1.19 SCHEMATIC DESIGN PHASE SERVICES

.1 The ARCHITECT shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the ARCHITECT's services.

.2 Based on the Owner's approval of the preliminary concept design, the ARCHITECT shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling, but at a minimum shall include graphical renderings to be used by Owner for marketing purposes. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

.3 The ARCHITECT shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

.4 The ARCHITECT shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the PROJECT that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

.5 The ARCHITECT shall submit to the Owner an estimate of Probable Construction Cost prepared in accordance with the terms herein. If the Construction Cost Limitation at the conclusion of the Schematic Design Phase Services is exceeded by the estimate of Probable Construction Cost by more than 10%, the Owner shall

.1 give written approval of an increase in the budget for the Construction Cost Limitation;

.2 terminate in accordance with this agreement;

.3 in consultation with the ARCHITECT, revise the PROJECT program, scope, or quality as required to reduce the Probable Construction Cost; or

.4 implement any other mutually acceptable alternative.

.6 If the Owner chooses to proceed under Section 1.19.5.3, the ARCHITECT, without additional compensation, shall modify the Schematic Design Documents as necessary to comply with the Owner's budget for the Construction Cost Limitation, or if the Owner chooses to proceed under Section 1.19.5.1, the ARCHITECT shall not be entitled to additional compensation.

.7 The ARCHITECT shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. ARCHITECT shall not proceed to the Design Development Phase without the approval of Owner; provided, however, this approval shall not relieve ARCHITECT of ARCHITECT'S responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. ARCHITECT shall bear full responsibility for, and all resulting excess costs incurred by ARCHITECT in, proceeding without Owner's approval.

1.20 DESIGN DEVELOPMENT PHASE SERVICES

.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the PROJECT requirements and the budget for the Cost of the Work, the ARCHITECT shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including

plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the PROJECT as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

.2 The ARCHITECT shall submit to the Owner an estimate of Probable Construction Cost prepared in accordance with the terms herein. If the Construction Cost Limitation at the conclusion of the Design Development Phase Services is exceeded by the estimate of Probable Construction Cost by more than 5%, the Owner shall

.1 give written approval of an increase in the budget for the Construction Cost Limitation;

.2 terminate in accordance with this agreement;

.3 in consultation with the ARCHITECT, revise the PROJECT program, scope, or quality as required to reduce the Probable Construction Cost; or

.4 implement any other mutually acceptable alternative.

.3 If the Owner chooses to proceed under Section 1.20.2.3, the ARCHITECT, without additional compensation, shall modify the Design Development Documents as necessary to comply with the Owner's budget for the Construction Cost Limitation or if the Owner chooses to proceed under Section 1.20.2.1, the ARCHITECT shall not be entitled to additional compensation.

.4 The ARCHITECT shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. ARCHITECT shall not proceed to the Construction Documents Phase without the approval of Owner; provided, however, this approval shall not relieve ARCHITECT of ARCHITECT'S responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. ARCHITECT shall bear full responsibility for, and all resulting excess costs incurred by ARCHITECT in, proceeding without Owner's approval.

ARTICLE 2
OWNER'S RESPONSIBILITIES

2.1. OWNER shall furnish any additional data relating to the requirements of this PROJECT that becomes available which OWNER deems necessary for ARCHITECT to perform its Services.

2.2. OWNER shall provide ARCHITECT with information prepared by others which is reasonably available to OWNER and which OWNER considers relevant to the PROJECT. It is the responsibility of ARCHITECT to verify the accuracy of any information provided by OWNER. OWNER does not warrant the information to be correct or up-to-date, but simply the best information reasonably available to OWNER at the time it is provided.

2.3. OWNER shall furnish to ARCHITECT a copy of proposal documents and other construction contract data prepared by others which OWNER determines is relevant to ARCHITECT's Services.

2.4. OWNER shall provide a preliminary budget for the PROJECT. The budget shall include any costs which are the responsibility of the OWNER.

2.5. If deemed necessary by OWNER and not otherwise included in the ARCHITECT'S scope of work, OWNER shall arrange and pay for reasonable surveys, soils investigation, structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials or toxic wastes, and other laboratory and environmental tests required by law or the Contract Documents.

2.6. OWNER shall be responsible for its legal, accounting, auditing, and insurance counseling services as may be necessary for the PROJECT, including any auditing services OWNER may require to substantiate the ARCHITECT's Applications for Payment.

2.7. OWNER, or OWNER'S Designee/Project Manager, shall review any documents provided by ARCHITECT and will furnish any comments in writing to ARCHITECT in a reasonably prompt manner after receipt of the documents for review. The OWNER's or OWNER's Project Manager's review of any documents shall not relieve ARCHITECT from liability for errors or omissions contained in those documents. ARCHITECT represents and warrants to OWNER that all documents prepared and issued by ARCHITECT will be of good quality, free from substantial defects, in conformance and compliance with all governmental requirements, and fit for the particular purpose intended thereby.

ARTICLE 3
SCHEDULE OF COMPLETION

3.1. ARCHITECT recognizes that time is of the essence in completing the Services, and that the Services provided to

OWNER and others involved in the PROJECT are dependent upon the timely performance of ARCHITECT's Services. ARCHITECT shall perform such Services in the manner, timing, and sequence as is required to meet OWNER's schedule. A schedule of the completion dates for phases of ARCHITECT's Services is set forth in Exhibit "D" of the General Services Agreement for ARCHITECT Services ("Agreement") executed by OWNER and ARCHITECT.

ARTICLE 4
PAYMENTS

Payments to ARCHITECT:

4.1. Expenses. No additional payments for expenses incurred by ARCHITECT will be made unless specifically agreed to in Exhibit "B," "B-1" or "C" of the Agreement with sufficient supporting documentation satisfactory to OWNER.

4.2. Times of Payment. Payments to ARCHITECT shall be made as follows:

4.2.1. An initial payment of Zero ($0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. ARCHITECT must submit statements in proportion to the services performed with supporting invoices attached for Basic, Additional, and Further Additional Services rendered and for Reimbursable Expenses incurred as provided in Exhibit "A," and/or "A-1", "B," "B-1," or "C." Reimbursable Expenses only include actual expenses incurred by ARCHITECT and ARCHITECT's employees for the PROJECT which have been authorized in advance by OWNER. When compensation is on the basis of a lump sum or percentage of construction cost, the statements will be based upon ARCHITECT's estimate of the proportion of the total Services actually completed at the time of billing. OWNER shall pay all undisputed and documented expenses contained in ARCHITECT's statements within sixty (60) days after receipt of the statements.

4.3. Payments Withheld

4.3.1. ARCHITECT'S compensation will not be directly reduced for any liquidated damages or other sums withheld from a contractor, or for any costs of changes in the scope of the Work other than those for which the ARCHITECT is liable under the Contract Documents.

4.3.2. Any provision hereof to the contrary notwithstanding, OWNER shall not be obligated to make any payment (whether a progress payment or final payment) to ARCHITECT hereunder if any one or more of the following conditions precedent exist:

(A) ARCHITECT is in default on any of its obligations hereunder or otherwise is in default under the Agreement or any of the Contract Documents;

(B) Any part of such payment is attributable to services which are not performed in accordance with the Agreement; provided, however, payment shall be made as to the part thereof attributable to services which were performed in accordance with the Agreement;

(C) ARCHITECT has failed to make payments promptly to Consultants or other third parties used in connection with the services for which OWNER has made payment to ARCHITECT; or

(D) If OWNER, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services in accordance with the Agreement, no additional payments will be due ARCHITECT hereunder unless and until ARCHITECT, at its sole cost, performs a sufficient portion of the Services so that such portion of the compensation then remaining unpaid is determined by OWNER to be sufficient to so complete the Services.

(E) To the extent OWNER disputes any payment allegedly due to ARCHITECT, OWNER shall notify ARCHITECT that a dispute exists, shall list the specific reason for nonpayment, and shall give ARCHITECT an opportunity to cure the noncompliance or offer compensation for noncompliance that cannot be cured, in accordance with Texas Government Code Section 2251.051(c) and (d).

4.4. Reproductions and Information. ARCHITECT shall, at its expense, furnish to OWNER all progress reproductions and information required by OWNER in a format satisfactory to OWNER.

4.5. Construction Cost Basis. When Construction Cost of the PROJECT (as defined in Article 5.1 below) is used as a basis for payment, it will be based on one of the following sources: Prior to receipt of a bona fide proposal from a qualified Proposer for the entire PROJECT or, if Work is not to be bid, prior to receipt of a bona fide negotiated proposal, such Construction Cost shall be based on ARCHITECT's most recent opinion of Construction Cost for the PROJECT, which opinion is referred to as the "Probable Construction Cost." The Probable Construction Cost will be subject to review by Owner and/or Owner's Designee before it is accepted as the basis for payment. After receipt of a bona fide proposal or negotiated proposal for the entire PROJECT, Construction Costs for the PROJECT shall be determined by OWNER and ARCHITECT.

4.6 Certificates For Payment To Contractor

.1 The ARCHITECT shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The ARCHITECT's certification for payment shall constitute a representation to the Owner, based on the ARCHITECT's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that, to the best of the ARCHITECT's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the ARCHITECT.

.2 The issuance of a Certificate for Payment shall not be a representation that the ARCHITECT has (1) made on-site inspections to check the quality or quantity of the Work except as otherwise required by this Agreement, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

.3 The ARCHITECT shall maintain a record of the Applications and Certificates for Payment.

.4 The ARCHITECT shall observe the Work prior to approving any Certificate for Payments to the Contractor to determine if the PROJECT is progressing in accordance with the approved schedule and to determine the dates of substantial completion and final completion. The ARCHITECT shall report the results of observations to the Owner in writing prior to approving any Certificate for Payments.

4.7 SUBMITTALS

.1 The ARCHITECT shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The ARCHITECT's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the ARCHITECT's professional judgment to permit adequate review.

.2 In accordance with the ARCHITECT-approved submittal schedule, the ARCHITECT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The ARCHITECT's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the ARCHITECT, of any construction means, methods, techniques, sequences or procedures. The ARCHITECT's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the ARCHITECT shall specify the appropriate performance and design criteria that such services must satisfy. The ARCHITECT shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the ARCHITECT. The ARCHITECT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

.4 The ARCHITECT shall review and respond to requests for information about the Contract Documents. The ARCHITECT shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The ARCHITECT's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the ARCHITECT shall prepare and issue supplemental Drawings and Specifications in response to requests for information by the Contractor at no additional charge to the Owner.

.5 The ARCHITECT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 5
CONSTRUCTION AND/OR PROJECT IMPLEMENTATION

5.1. Probable Construction Cost. The Probable Construction and/or PROJECT Implementation Cost for the PROJECT means the portion of the total cost of the overall development to OWNER which is applicable to the PROJECT, but it does not

include compensation for professional services or related expenses, the cost of land, or rights-of-way, or compensation for or damage to properties unless the Agreement so specifies; nor will it include OWNER's own administrative, legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the PROJECT. Labor and/or materials associated with the design process furnished by ARCHITECT for the PROJECT will not be included in such Probable Construction and/or PROJECT Implementation Cost. Materials and equipment furnished by OWNER will be included at current market prices except that used materials and equipment shall be included as if purchased new for the PROJECT.

5.2. Probable Construction and/or PROJECT Implementation Budget. The estimated Construction and/or PROJECT Implementation Cost of the PROJECT, which after discussion with ARCHITECT has been allocated by OWNER to the PROJECT, is set forth in Section 5 of the Agreement. Such amount is referred to herein as the "Construction and/or PROJECT Implementation Budget" or "Construction Cost Limitation". The Construction and/or PROJECT Implementation Budget may be adjusted by agreement of OWNER and ARCHITECT from time to time on the basis of design considerations and construction cost estimates made during the course of design of the PROJECT, and all such adjustments shall be confirmed in writing. ARCHITECT shall periodically advise OWNER of its evaluation of the Probable Construction and/or PROJECT Implementation Cost of the PROJECT and continuously monitor its Work so that any facilities it designs for OWNER hereunder will be within the Construction and/or PROJECT Implementation Budget.

5.2.1. Estimates and statements of Probable Construction and/or PROJECT Implementation Costs prepared by ARCHITECT represent its best judgment as one familiar with the PROJECT. When a Construction and/or PROJECT Implementation Budget ("Construction Cost Limitation") has been established by OWNER, it will include a bidding contingency of 10% unless another amount is agreed upon in writing. If in the ARCHITECT'S opinion the OWNER'S Construction Cost Limitation estimate is not sufficient to construct the PROJECT, the ARCHITECT, after consultation with OWNER, shall recommend to the OWNER what materials, equipment, component systems and types of construction or implementation methods are to be included in the Contract Documents with respect to the PROJECT, and to make reasonable adjustments in the scope of the PROJECT to bring it within the Owner's Construction Cost Limitation budget. If required by OWNER, ARCHITECT shall assist OWNER in including in the Contract Documents provisions for alternative bids to adjust the Probable Construction Cost to the Construction and/or PROJECT Implementation Budget.

5.2.2 The ARCHITECT shall update the estimate of Probable Construction Cost at the following phases: conclusion of the Programming Phase, conclusion of the Schematic Design Phase, conclusion of the Design Development Phase, 50% Construction Documents, 95% Construction Documents, and 100% Construction Documents.

5.2.3 The ARCHITECT shall submit the estimate of Probable Construction Cost to conform with the Construction Specifications Institute's MasterFormat 2016 edition.

ARTICLE 6
GENERAL

6.1. Ownership of Documents and Records

6.1.1. Drawings and Specifications are and shall remain the property of OWNER whether the PROJECT for which they are created is executed or not. The Drawings and Specifications shall not be used by ARCHITECT on other projects, except by agreement in writing from the OWNER. At the time of termination of the Agreement for any reason, all completed or partially completed designs, plans and Drawings and Specifications prepared under the Agreement shall become the property of OWNER.

6.1.2. Records of ARCHITECT's Direct Labor Costs, Payroll Costs and Reimbursable Expenses pertaining to the PROJECT shall be kept in accordance with generally accepted accounting principles and made available to OWNER on request.

6.1.3. ARCHITECT's records and design calculations, in legible form, will be available to OWNER for examination and audit on request.

6.1.4. ARCHITECT shall generate CAD drawings utilizing AutoCAD Release 2015 as a minimum for all elements of the contract drawings and shall provide electronic data of same reflecting as-built conditions. BIM tools such as Revit are strongly encouraged, though not required.

6.2. Insurance

6.2.1. The ARCHITECT shall provide and maintain in effect during the performance of the Work under the Agreement insurance of the following types and with indemnification limits not less than the amounts indicated:

Professional Liability:	$1,000,000.00 per claim and $2,000,000.00 in the aggregate
Worker's Compensation	$1,000,000.00
Comprehensive General Liability:	
Occurrence	$1,000,000.00
Aggregate	$2,000,000.00
Personal Injury	$1,000,00.00 each person
(Coverage to include groups A, B, & C w/exclusion "C" aggregate removed.)	
Automobile Liability:	$1,000,000.00 combined single limit
ARCHITECT's Consultants	$500,000.00
Excess Umbrella Liability	$3,000,000.00

.1 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas.

.2 The policy so issued in the name of ARCHITECT shall also name the Owner as additional insured, under all ARCHITECTS insurance coverage to the fullest extent additional insureds are allowed under the policy(ies), ARCHITECT shall provide any defense to the Owner provided by the policy(ies) to an additional insured, except for professional liability insurance and worker's compensation insurance. To the extent an ARCHITECT's Consultant is named as an additional insured on any policy held by the ARCHITECT, separate coverage shall not be required of the ARCHITECT's Consultants. All policies held by the ARCHITECT shall be primary coverage.

.3 ARCHITECT shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, 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, and a statement that, except for professional liability insurance and worker's compensation insurance, the Owner is named as additional insured. ARCHITECT shall permit Owner to examine the insurance policies, or at Owner's option, ARCHITECT shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If ARCHITECT neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at ARCHITECT's expense.

.4 Insurance provided pursuant to this Section shall be considered a part of the ARCHITECT's basic services and shall not be a Reimbursable Expense within the scope of any provisions of this Agreement.

6.2.2. In the event that the Agreement is terminated prior to the completion of the PROJECT, ARCHITECT shall maintain all insurance policies provided by ARCHITECT pursuant to this Agreement in full force and effect for one year from the date of final acceptance of the PROJECT. If ARCHITECT changes the form of such policies from a "claims made" policy to an "occurrence" policy, ARCHITECT shall obtain at ARCHITECT's sole cost and expense professional liability "tail" insurance coverage for any time during such period which is not covered by such occurrence policy.

6.2.3. ARCHITECT shall require that all Consultants maintain professional liability insurance in the amounts set forth below or as otherwise agreed to by Owner and ARCHITECT and in accordance with the terms and conditions of paragraph 6.2.1.(D).

6.2.4. Should ARCHITECT change insurance carriers, the new carrier must provide proof that the new policy provides the same retroactive date as the expiring policy or that the new policy provides full prior acts coverage. If the new carrier will not provide this wording, ARCHITECT must provide proof of coverage from the expiring carrier that coverage will be provided for the completed PROJECT as required above.

6.3. Manual of General Conditions. OWNER's current Manual of General Conditions for School Construction ("Manual") is part of the Agreement. All capitalized terms used herein and in the Agreement, unless otherwise defined, shall have the meaning ascribed to them in the current Manual published by OWNER. The Manual and the Agreement represent the entire and integrated agreement between OWNER and ARCHITECT and supersede all prior negotiations, representations or agreements, either written or oral. If there is a conflict between the terms of the Agreement and the terms of OWNER's current Manual, then the terms of the Agreement shall control. The Agreement may be amended only by a written amendment signed by both OWNER

and ARCHITECT. Notwithstanding the foregoing, if the Agreement does not contemplate construction, then the Manual does not apply and is not a part of the Agreement.

6.4. Successors and Assigns. ARCHITECT binds itself and its partners, successors, executors, administrators and assigns to OWNER, in respect to all covenants of the Agreement, and ARCHITECT acknowledges that the Agreement cannot be assigned by it.

6.5. Delegation of Duties. If in the Agreement it is stated that the Basic, Additional or Further Additional Services of ARCHITECT are to be performed by one or more specified individuals within ARCHITECT's organization, only the individuals so specified shall perform Services hereunder and their duties shall not be delegated to any other individual or entity without the written consent of OWNER.

6.6. Texas Law and Choice of Forum. The Agreement shall be construed in accordance with and governed by the law of the State of Texas without giving effect to any "conflict of law" rules of the State of Texas. The Agreement shall be performable in El Paso County, Texas.

6.7. Scope of Agreement. The Agreement and this Standard Provisions for ARCHITECT Agreements, including the identified exhibits, constitute the entire agreement between OWNER and ARCHITECT and supersede all prior or contemporaneous written or oral agreements and understandings between OWNER and ARCHITECT with respect to the subject matter of the Agreement. No provision of the Agreement may not be amended, modified, supplemented or added to except by an agreement in writing, executed by OWNER and ARCHITECT, expressly stating that such agreement is an amendment of the Agreement.

6.8. Immunity. ARCHITECT stipulates that OWNER is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and/or liability under the Constitution and laws of the State of Texas. By entering into the Agreement, OWNER does not waive any of its immunities from suit and/or liability, except as otherwise provided herein and as specifically authorized by law.

6.9. Hazardous Materials. ARCHITECT shall not specify or allow the use or installation of any material on the PROJECT which contains, in any proportion, a substance determined or suspected by an agency of federal or state government to create a health hazard. ARCHITECT shall notify OWNER immediately if it becomes aware of the existence of any hazardous materials at the PROJECT. ARCHITECT releases OWNER from any and all liability should ARCHITECT and/or those under ARCHITECT's contractual control be exposed to hazardous materials at the PROJECT.

6.9.1. ARCHITECT shall review all Material Safety Data Sheets ("MSDS") of Shop Drawings/Product Data Samples and similar submittals, to ascertain that no Asbestos Materials, Asbestos-Containing Materials, or other Hazardous Materials are being utilized or installed.

6.9.2. ARCHITECT shall submit, in compliance with the Texas Department of State Health Services ("TDSHS"), Texas Asbestos Health Protection Rules ("TAHPR"), July 8, 2021, a statement that no Asbestos Containing Building Materials ("ACBM") were used during the construction of the PROJECT. ARCHITECT shall review the information included in the MSDS of all products used in the construction of the PROJECT as compiled by the Contractor and any other documentation necessary to make that determination, and if it finds no asbestos in any of those products, shall submit this statement.

6.10. Sales Tax. OWNER is exempt from payment of Sales Taxes under the Texas Tax Code, Chapter 151, for the purpose of purchasing tangible personal property. ARCHITECT shall obtain a sales tax exemption form from OWNER to be used when billing OWNER for any purchases made by ARCHITECT on behalf of OWNER.

6.11. Indemnity. ARCHITECT SHALL, DURING THE DESIGN AND CONSTRUCTION OF THE PROJECT AND FOR A PERIOD OF TEN YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL TWO YEARS IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 16.008(c)), INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, MANAGERS, TRUSTEES, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE, INCLUDING ATTORNEYS' FEES, INCURRED BY OWNER ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY OR ALL PERSONS, INCLUDING INVITEES AND EMPLOYEES OF THE OWNER, CONTRACTOR, ARCHITECT, OR SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK THAT IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A CONSULTANT OR SUPPLIER, COMMITTED BY ARCHITECT, OR ARCHITECT'S AGENT, ARCHITECT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL; PROVIDED AND EXCEPT, HOWEVER, THAT THIS INDEMNIFICATION PROVISION SHALL NOT BE CONSTRUED AS REQUIRING ARCHITECT TO INDEMNIFY OR HOLD OWNER HARMLESS FOR ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE

ON ACCOUNT OF DAMAGED PROPERTY OR INJURIES, INCLUDING DEATH TO ANY PERSON, WHICH MAY ARISE OUT OF OR MAY BE CAUSED BY ANY ACT OF NEGLIGENCE OR BREACH OF ANY OBLIGATION UNDER THIS AGREEMENT BY OWNER OR OWNER'S EMPLOYEES OR AGENTS, EXCEPT ARCHITECT. FURTHER, ARCHITECT SHALL REIMBURSE THE OWNER'S REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ARCHITECT'S LIABILITY.

6.12 Instructions to Designers. The Instructions to Designers set forth on Exhibit "E" attached to the General Services Agreement for Architect Services are incorporated herein for all practicable purposes, including as guidelines to be followed for the deliverable expectations.

ARTICLE 7
SPECIAL ADDITIONAL PROVISIONS IF SERVICES CONTINUE THROUGH CONSTRUCTION

7.1. Based on the Design Development Documents approved by Owner, and any further adjustments in the scope or quality of the PROJECT, and upon written authorization from OWNER, ARCHITECT shall prepare, for approval by OWNER, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for construction of the PROJECT and the Probable Construction and/or Implementation Cost. ARCHITECT shall advise OWNER of any changes in the Probable Construction and/or Implementation Cost, and thereafter OWNER may, at its option, adjust OWNER's estimated cost. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and ARCHITECT acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the ARCHITECT shall review. The ARCHITECT shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the PROJECT.

7.2. ARCHITECT shall assist OWNER in the preparation of the necessary bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms, the Conditions of the Contract, and the form of agreement between OWNER and the Contractor. The ARCHITECT shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The ARCHITECT shall create a Fire Evacuation Plan (8 ½" x 11") for the projects.

7.3. ARCHITECT shall, at its own expense, furnish four sets of drawings and specifications for bidding purposes and shall include electronic copies of same. Any additional sets required by OWNER to be furnished shall be considered to be an Additional Service. Any sets required by ARCHITECT shall be supplied at ARCHITECT's expense.

7.4. ARCHITECT shall assist OWNER in obtaining written documentation regarding the qualifications of any contractor or proposed contractor for any construction of the PROJECT, which information shall be detailed on OWNER's forms.

7.5. ARCHITECT, following OWNER's written approval of the Construction Documents, shall assist OWNER in obtaining and evaluating bid proposals and assist in awarding and preparing contracts for construction.

7.6. Unless otherwise provided in the Agreement and incorporated in the Contract Documents, ARCHITECT shall provide administration of the Contract for Construction as set forth in the Manual which is current as of the date of the Agreement.

7.7. ARCHITECT shall be a representative of OWNER during the Construction Phase, and shall advise and consult with OWNER. Instructions to the Contractor shall be forwarded through ARCHITECT. ARCHITECT shall have authority to act on behalf of OWNER to the extent provided in the Contract Documents unless otherwise modified by written instrument.

7.8. ARCHITECT shall visit the site at regular intervals appropriate to the stage of construction or as otherwise agreed by the OWNER and ARCHITECT in writing to become familiar with the progress and quality of the Work completed and to determine if the Work is being performed in accordance with the Contract Documents. ARCHITECT shall be required to make regular on-site observations to check the quality and quantity of the Work on the basis of on-site observations as an ARCHITECT. ARCHITECT shall keep the OWNER informed of the progress and quality of the Work, and shall take all reasonable steps to guard the OWNER against defects and deficiencies in the Work and shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. ARCHITECT's representative visiting the site and observing the work shall be experienced and knowledgeable, capable of recognizing deficiencies, and assertive enough to require that any noncompliance by the Contractor with the Contract requirements be remedied. The ARCHITECT shall generate and submit meeting minutes to the Owner no later than 3 business days after said meeting.

7.9. Notwithstanding the foregoing, ARCHITECT shall be responsible for reporting to OWNER any failure of the Contractor to comply with the specifications and the requirements of the Contract Documents.

7.10. ARCHITECT shall at all reasonable times have access to the Work wherever it is in preparation or progress.

7.11. ARCHITECT shall have authority to reject Work which does not conform to the Contract Documents. Whenever the ARCHITECT considers it necessary or advisable for implementation of the intent of the Contract Documents, ARCHITECT will have authority to require reasonable additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The ARCHITECT shall notify and receive approval from the Owner prior to ordering any such inspection or testing which will result in additional cost to the Owner. However, neither this authority of ARCHITECT nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the OWNER and ARCHITECT to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

7.12. ARCHITECT shall review and approve and take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with the design concept expressed in the Contract Documents. ARCHITECT's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Contractor, while allowing sufficient time in ARCHITECT's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, which also remains the responsibility of the Contractor to the extent required by the Contract Documents. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, ARCHITECT shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents, unless ARCHITECT knows or should reasonably have known such professional certification is inaccurate.

7.13. ARCHITECT shall prepare Change Orders and Construction Change Directives, with supporting documentation and data for OWNER's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents. Any agreement for change is not valid until all required signatures are affixed to the proposed change document.

7.14. ARCHITECT will notify OWNER when the PROJECT is substantially complete, and will get OWNER's approval of the date of substantial completion. When the PROJECT is ready for final inspection, OWNER and ARCHITECT will inspect and verify all Work is complete and performed according to the Contract Documents and the satisfaction of the OWNER. ARCHITECT shall secure and transmit to the OWNER required guarantees, Final Waivers of Lien and Contractor's Affidavits acquired from the Contractor in a timely manner. ARCHITECT shall deliver all keys, manuals, record drawings and maintenance documents acquired from the Contractor in a timely manner to the OWNER.

7.15 After Owner's approval of the Construction Documents, the ARCHITECT shall not make or approve any change in the Work, except for minor changes in the Work not involving an adjustment in the Contract Sum, expenditure of contingency funds or an extension of the Contract Time, without the prior written consent of the Owner. The ARCHITECT shall be liable to the Owner for any damages arising from or caused by any change to the Work made or approved by the ARCHITECT without the Owner's prior written consent.

7.16 The ARCHITECT shall provide administration of the Contract between the Owner and the Contractor as set forth below and in General Conditions for Construction Contract, a copy of which has been provided to the ARCHITECT concurrent with the execution of this Agreement. If the Owner and Contractor modify General Conditions for Construction Contract, those modifications shall not affect the ARCHITECT's services under this Agreement unless the Owner and the ARCHITECT amend this Agreement.

7.17 The ARCHITECT shall advise and consult with the Owner and/or the Owner's designee/Project Manager during the Construction Phase Services. The ARCHITECT shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The ARCHITECT shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the ARCHITECT be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ARCHITECT shall be responsible for the ARCHITECT's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Notwithstanding the foregoing, the ARCHITECT shall be responsible for providing at no additional cost to the Owner architectural services made necessary by major defects or deficiencies in the Contractor's work which the ARCHITECT should have discovered through reasonable care.

7.18 The ARCHITECT's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates twelve (12) months after the date of Substantial Completion.

7.19 The ARCHITECT shall prepare Drawings, Specifications, and other documentation and supporting data evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives at no additional expense to the Owner.

7.20 The ARCHITECT shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The ARCHITECT's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

7.21 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in General Conditions for Construction Contract, the ARCHITECT shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

ARTICLE 8
TERMINATION, CLAIMS AND DISPUTES

8.1. Termination for Cause. The Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of the Agreement through no fault of the party initiating the termination. Failure of OWNER to make timely payments to ARCHITECT in accordance with the Agreement shall be considered substantial nonperformance and cause for termination. ARCHITECT shall be allowed to suspend ARCHITECT's performance of services under the Agreement for nonpayment by OWNER only after provision of ten (10) days' written notice in accordance with Texas Government Code, Chapter 2251, Subchapter D.

8.2. Suspension by OWNER for Convenience. OWNER may, without cause, suspend work on the PROJECT upon written notice to ARCHITECT.

8.2.1. If the PROJECT is suspended by OWNER for more than thirty (30) consecutive days, ARCHITECT shall be compensated for actual services performed prior to notice of such suspension.

8.2.2. If the PROJECT is suspended by OWNER for more than ninety (90) consecutive days, ARCHITECT may terminate the Agreement by giving not less than seven (7) days written notice. If ARCHITECT elects to terminate the Agreement pursuant to this Section, ARCHITECT shall not be entitled to any additional compensation other than the compensation received pursuant to Section 8.2.1.

8.3. Termination by OWNER for Convenience. The Agreement may be terminated by OWNER for its convenience and without cause upon not less than seven (7) days' written notice to ARCHITECT.

8.3.1. In the event of termination by OWNER for convenience and without cause, ARCHITECT shall be compensated for actual services performed prior to termination, together with Reimbursable Expenses then due.

8.3.2. Payment of the compensation defined in Section 8.3.1. is the sole and exclusive remedy for ARCHITECT for termination of this Agreement by OWNER pursuant to Section 8.3. ARCHITECT shall not be entitled to, and hereby waives, claims for lost profits and all other damages and expenses.

8.4. Good Faith Discussions/Grievance. All claims, disputes, or matters in controversy between OWNER and ARCHITECT shall be discussed by the parties in good faith, in an attempt to resolve the claim, dispute, or controversy. In the event such claim, dispute, or controversy cannot be resolved by good faith discussion between the parties, any such claim, dispute or matter in controversy shall be subject to OWNER's grievance policy [GF (LEGAL) and (LOCAL) or other policy as designated by OWNER] and the timelines established in the policy. If ARCHITECT is dissatisfied with the outcome of OWNER's grievance process, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

8.5. Mediation. It shall be a condition precedent to the institution of any legal proceeding that the parties endeavor to resolve claims, disputes and other matters in question through mediation. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Agreements reached in mediation shall be reduced to writing, considered for approval by OWNER's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas. Unless the parties mutually agree otherwise, mediation shall be administered in accordance with the following:

.1 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.

.2 In the event the Owner and the ARCHITECT 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.

.3 At all times during the course of any dispute resolution process, the ARCHITECT shall continue diligently and without delay to perform the services and obligations of the Agreement.

.4. The parties shall share the mediator's fee equally. The mediation shall be held in the place where the PROJECT is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

8.6. Arbitration. The parties agree that any claim, dispute, or other matter in controversy between them shall not be subject to mandatory arbitration. The parties may, however, mutually agree in writing to submit such claims, disputes, or matters in controversy to arbitration. Neither party may compel the other to arbitrate any claim, dispute, or matter in controversy between them.

8.7. Litigation.

8.7.1. In any litigation under the Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party.

8.7.2. In any litigation (or arbitration if mutually agreed upon in writing) arising under the Agreement, the types and amounts of damages recoverable shall be subject to Texas Local Government Code, Chapter 271, Subchapter I.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1. Child Support. By signing the Agreement, ARCHITECT certifies as follows: Pursuant to Texas Family Code, Section 231.006, ARCHITECT certifies that it is not ineligible to receive the specified grant, loan, or payment and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

9.2. Felony Conviction. Pursuant to Texas Education Code Section 44.034, ARCHITECT must give advance written notice to OWNER if ARCHITECT or an owner or operator of ARCHITECT has been convicted of a felony. OWNER may terminate the Agreement if OWNER determines that ARCHITECT failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

9.3. Criminal History Check.

9.3.1. ARCHITECT shall obtain all criminal history information required by Texas Education Code, Chapter 22 regarding its "covered employees," as defined below. If ARCHITECT is required by Chapter 22 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then ARCHITECT will also subscribe to that person's criminal history record information. Before beginning any Work on the PROJECT, ARCHITECT will provide written certification to OWNER that ARCHITECT has complied with the statutory requirements as of that date. Upon request by OWNER, ARCHITECT will provide, in writing: updated certifications and the names and any other requested information regarding covered employees, so that OWNER may obtain criminal history recommended information on the covered employees. ARCHITECT shall assume all expenses associated with obtaining criminal history record information. To the extent ARCHITECT cannot obtain the information, ARCHITECT shall cooperate with the OWNER for the OWNER to do so, and ARCHITECT shall reimburse the OWNER for all expenses incurred.

9.3.2. ARCHITECT will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the PROJECT. If ARCHITECT receives information that a covered employee has a reported disqualifying criminal history, then ARCHITECT will immediately remove the covered employee from the PROJECT and notify OWNER in writing within three (3) business days. If OWNER objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then ARCHITECT agrees to discontinue using that covered employee to provide services on OWNER's PROJECT. If ARCHITECT has taken precautions or imposed conditions to ensure that the employees of ARCHITECT and any Consultants will not become covered employees, ARCHITECT will ensure that these precautions or conditions continue throughout the time Services are provided.

9.3.3. For the purposes of this Section, "covered employees" means employees, agents or subcontractors of ARCHITECT

or any of ARCHITECT's architects who have or will have continuing duties related to Services to be performed on OWNER's PROJECT and have or will have direct contact with OWNER's students. OWNER in its sole discretion will determine what constitutes direct contact with OWNER's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the OWNER, or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Texas Penal Code, Chapters 19-22, Offenses Against The Person; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure, Chapter 62; or an equivalent offense under federal law or the laws of another state.

9.4. Nondiscriminatory Employment. In connection with the execution of the Agreement, ARCHITECT shall fully comply with OWNER's following non-discrimination requirements:

9.4.1. OWNER condemns and prohibits discrimination, including harassment, against any employee on the basis of race, color, age, sex, religion, national origin, marital status, citizenship, military status, disability, genetic information, gender stereotyping and perceived sexuality or any other basis prohibited by law.

9.4.2. Submittal to OWNER of reasonable evidence of discrimination will be grounds for termination of the Agreement for cause.

9.4.3. This policy does not require the employment of unqualified persons.

9.5. Conflict of Interest. No employee of OWNER shall have any personal interest, direct or indirect, in the Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

9.6. Business Ethics.

9.6.1. During the course of pursuing agreements, and in the course of Agreement performance, ARCHITECT and its Consultants, agents, representatives and employees will maintain a business ethics standard aimed at avoiding real or apparent impropriety or conflicts of interest. Any gifts, entertainment, payments, loans or other considerations to any personnel of OWNER, its managers, trustees, officers, agents, or to any of their family members shall be made in accordance with applicable law and OWNER Board Policy. At any time ARCHITECT believes there may have been a violation of this obligation, ARCHITECT shall notify OWNER of the possible violation. OWNER is entitled to request a representation letter from ARCHITECT, its Consultants, agents, representatives and employees at any time to disclose all things of value passing from ARCHITECT, its Consultants, agents, representatives or employees to OWNER's personnel, its managers, trustees, officers, or agents or any of their family members.

9.6.2. OWNER may, by written notice to ARCHITECT in accordance with Article 8, terminate the Agreement if it is deemed by the District that gratuities, in the form of entertainment, gifts, or anything of monetary value, were offered or given by the ARCHITECT, or any agent, representative, employee or Consultants of ARCHITECT, to any personnel of OWNER, its managers, trustees, officers or agents with a view toward securing an agreement or securing favorable treatment with respect to awarding, amending, or making any determinations with respect to the performing of such an agreement. In the event the Agreement is cancelled by the OWNER pursuant to this section, OWNER shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the ARCHITECT in providing such gratuities.

9.7. Liquidated Damages. In addition to any other remedy available to OWNER under the Agreement or by law, for each calendar day after the expiration of the due date for the Schematic Design Phase, the Design Development Phase, and the Construction Documents Phase that the documents have not been completed, the amount per day as stipulated on Exhibit "D" to the Agreement will be deducted from any compensation due or to become due, the ARCHITECT, not as a penalty, but as liquidated damages for OWNER's delay cost in obtaining use of the PROJECT.

9.8 Terms in this Agreement shall have the same meaning as those in General Conditions for Construction Contract.

9.9 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or ARCHITECT

9.10 ARCHITECT shall keep all accounting and construction records on the PROJECT for a period of at least ten (10) years after Final Completion of the PROJECT, and thereafter shall offer the records to the Owner in writing in order for OWNER to comply with its record retention requirements, per the Texas Government Code Section 441.158 et seq. and the Texas Library and Archives Commission's Local Schedules, and all federal requirements.. In the alternative, ARCHITECT may provide such records to Owner for retention at any time if Owner agrees in writing to accept such records in lieu of ARCHITECT's retention under this Section.

9.11 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be General Conditions for Construction Contract for the PROJECT.

9.12 Any notice required by or permitted under this Agreement must be in writing unless otherwise provided herein. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

9.13 If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom.

9.14 The Owner shall have the right to examine, copy, and/or audit the books and other records of the ARCHITECT relating solely to this Agreement upon reasonable request to the ARCHITECT.

9.15 If this Agreement is valued at $100,000 or more and if ARCHITECT has at least ten (10) full time employees, then ARCHITECT verifies, represents and warrants to the Owner that: (1) the ARCHITECT does not boycott Israel and will not boycott Israel during the term of this contract; (2) the ARCHITECT does not boycott energy companies and will not boycott energy companies during the term of this contract; and (3) the ARCHITECT does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against any firearm entity or firearm trade association. These requirements do not apply to a sole proprietorship;

9.16 The Architect represents, warrants, and certifies that Contractor is not a provider or affiliate as defined in Texas Government Code §2273.003(a).

9.17 The ARCHITECT certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

9.18 The ARCHITECT represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

ARTICLE 10
CHANGES IN THE WORK

10.1 The ARCHITECT shall prepare Change Orders, Construction Change Directives and documents authorizing expenditures of contingency funds, with supporting documentation and data if deemed necessary by the ARCHITECT, as Basic Services for which the ARCHITECT is compensated, for the Owner's approval and execution in accordance with the Contract Documents.

The ARCHITECT may authorize minor changes in the Work not involving an adjustment in the Contract Sum, an expenditure of contingency funds or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the ARCHITECT shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified as Basic Services.

10.2 The ARCHITECT shall maintain records relative to changes in the Work.

10.3 The ARCHITECT shall prepare a set of reproducible record drawings in AutoCad format, on diskette or CD, showing significant changes made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the ARCHITECT.

ARTICLE 11
PROJECT COMPLETION

11.1 The ARCHITECT shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

11.2 The ARCHITECT's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

11.3 When the Work is found to be substantially complete, the ARCHITECT shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

11.4 The ARCHITECT shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

11.5 The ARCHITECT shall, without additional compensation, conduct a meeting and warranty inspection walkthrough with the Owner to review the facility operations and performance at the sixth and eleventh months following substantial completion of the Project. ARCHITECT shall prepare a list of items needing correction and submit the list to Owner. ARCHITECT shall assist Owner as necessary so that a satisfactory solution to the deficiencies is provided. The Roofing Contractor shall attend the 23rd month roofing warranty walk-through.

ARTICLE 12
FINAL CONSTRUCTION COST

12.1 For purposes of this Agreement, the Final Construction Cost shall be the total cost to the Owner, or to the extent the PROJECT is not completed, the estimated costs to the Owner to construct all elements of the PROJECT designed or specified by the ARCHITECT and shall include contractors' general conditions costs, overhead and profit. The Final Construction Cost does not include the compensation of the ARCHITECT, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

12.2 The Owner's budget for the Final Construction Cost may be adjusted throughout the PROJECT as required considering the Owner's budget, the preliminary estimate of the Probable Construction Cost and updated estimates of the Probable Construction Cost prepared by the ARCHITECT, represent the ARCHITECT's judgment as a design professional. It is recognized, however, that neither the ARCHITECT nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the ARCHITECT cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Final Construction Cost or from any estimate of the Probable Construction Cost or evaluation prepared or agreed to by the ARCHITECT.

12.3 In preparing estimates of the Cost of Work, the ARCHITECT shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the PROJECT; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Final Construction Cost to meet the Owner's budget for the Final Construction Cost. The ARCHITECT's estimate of the Probable Construction Cost shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the ARCHITECT shall provide such services as an Additional Service.

12.4 If the Bidding or Negotiation Phase has not commenced within ninety (90) days after the ARCHITECT submits the Construction Documents to the Owner, through no fault of the ARCHITECT, the Owner's budget for the Final Construction Cost shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

12.5 If at any time the ARCHITECT's estimate of the Probable Construction Cost exceeds the Owner's budget for the Construction Cost Limitation, the ARCHITECT shall make appropriate recommendations to the Owner to adjust the PROJECT's size, quality or budget for the Construction Cost Limitation, and the Owner shall cooperate with the ARCHITECT in making such adjustments.

12.6 The ARCHITECT shall submit to the Owner an estimate of Probable Construction Cost with the 50% Construction Documents submittal, prepared in accordance with the terms herein. If the Construction Cost Limitation at the submittal of the 50% Construction Documents is exceeded by the estimate of Probable Construction Cost by more than 3%, the Owner shall

.1 give written approval of an increase in the budget for the Construction Cost Limitation;

.2 terminate in accordance with this agreement;

.3 in consultation with the ARCHITECT, revise the PROJECT program, scope, or quality as required to reduce the Probable Construction Cost; or

.4 implement any other mutually acceptable alternative.

If the Owner chooses to proceed under Section 12.6.3, the ARCHITECT, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Construction Cost Limitation, or if the Owner chooses to proceed under Section 12.6.1, the ARCHITECT shall not be entitled to additional compensation.

12.7 If the Final Construction Cost at the conclusion of the Construction Documents Phase Services is exceeded by the bid or proposal providing the best value to the Owner, the Owner shall

.1 give written approval of an increase in the budget for the Final Construction Cost;

.2 authorize rebidding or renegotiating of the PROJECT within a reasonable time;

.3 terminate in accordance with this agreement;

.4 in consultation with the ARCHITECT, revise the PROJECT program, scope, or quality as required to reduce the Final Construction Cost; or

.5 implement any other mutually acceptable alternative.

12.8 If the Owner chooses to proceed under Section 12.7.4, the ARCHITECT, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Final Construction Cost at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 12.7.1. The ARCHITECT's modification of the Construction Documents shall be the limit of the ARCHITECT's responsibility under this Article 12.

ADDENDUM A – EDGAR & ESSER

EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS (EDGAR)

Contracts Under Federal Awards
Terms and Conditions

Pursuant to 2 CFR § 200.326, all contracts, including small purchases, awarded by El Paso Independent School District ("DISTRICT") and the DISTRICT'S subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable. Accordingly, in addition to other terms and conditions herein provided, the following provisions are incorporated into the Agreement, as applicable, and Contractor agrees to comply with these provisions:

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when the DISTRICT expends federal funds, the DISTRICT reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

(B) All contracts in excess of $10,000.00 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Pursuant to Federal Rule (B) above, when the DISTRICT expends federal funds, the DISTRICT reserves the right to immediately terminate any agreement in excess of $10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The DISTRICT also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if the DISTRICT believes, in its sole discretion that it is in the best interest of the DISTRICT to do so. Vendor will be compensated for work performed and accepted and goods accepted by the DISTRICT as of the termination date if the contract is terminated for convenience of the DISTRICT. Any award under this procurement process is not exclusive and the DISTRICT reserves the right to purchase goods and services from other vendors when it is in the DISTRICT's best interest.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 F.R. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when the DISTRICT expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000.00 awarded by non-Federal entities must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when the DISTRICT expends federal funds during the term of an award for all contracts and subgrants for construction or repair, Vendor will be in compliance with all applicable Davis-Bacon Act provisions.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000.00 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work

week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when the DISTRICT expends federal funds, Vendor certifies that Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by the DISTRICT resulting from this procurement process.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency ("EPA").

Pursuant to Federal Rule (G) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

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

Pursuant to Federal Rule (H) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process, Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000.00 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by EPISD, Vendor certifies that during the term and after the awarded term of an award for all contracts by EPISD resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding $100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

(J) Contract Cost and Price - §200.323. (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there

is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles. (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Pursuant to Federal Rule (J) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (J) above.

(K) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment - §200.216. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. See Public Law 115-232, section 889 for additional information. See also §200.471.

Pursuant to Federal Rule (K) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (K) above.

(L) Domestic Preferences for Procurements - §200.322. (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. (b) For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Pursuant to the Federal Rule above, the DISTRICT has a preference for goods, products, or materials produced in the United when spending federal funds. Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (L) above.

(M) Procurement of Recovered Materials. For all contracts greater than $10,000.00, Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and any implementing regulations where applicable and provide such information and certifications as the District may require to confirm estimates and otherwise comply. The requirements of Section 6002 includes (1) procuring only items designated in guidelines of the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000.00 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000.00; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Pursuant to the Federal Rule above, when federal funds are expended by the District, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c) (3) (A) (i)), the vendor certifies, by signing this document, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

(N) Small, Minority, Women's Business Enterprises, and Labor Surplus Affirmative Steps. If any subcontracts are to be let by the Contractor, Contractor will be required to shall take affirmative steps to encourage participation by and facilitate contracting with small and minority businesses, women's business enterprises and labor surplus area business firms as set out in 2 C.F.R. 200.321. The affirmative steps include the following: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are

potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

(O) Records Retention Requirements for Contracts Involving Federal Funds. When federal funds are expended by DISTRICT for any contract resulting from this procurement process, Vendor agrees to comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

(P) Equal Employment Statement. It is the policy of DISTRICT not to discriminate on the basis of race, color, national origin, sex, religion, age, (applies to individuals who are 40 years of age or older), disability, or genetic information in its programs. Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

(Q) Certification of Access to Records – 2 C.F.R. § 200.336. Vendor agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

(R) Copyright. All contracts paid from state or federal grants administered by the Texas Education Agency ("TEA") must retain copyright for TEA and for the federal government (if a federally funded contract) unless otherwise negotiated in writing with TEA. Pursuant to the provisions in 2 C.F.R. 200.315, title to intangible property vests in the District as long as such property is used for authorized purposes. However, TEA and the federal awarding agency reserve a royalty-free, nonexclusive and irrevocable right to reproduce, public, or otherwise use the work for federal purposes, and to authorize others to do so.

(S) Certification of Compliance with the Energy Policy and Conservation Act. When DISTRICT expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

(T) Certification of Compliance with Buy America Provisions. DISTRICT has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act.

(U) For all professional services contracts paid with federal funds, the contract contains the following provisions:

1. All services will be completed during the effective dates of the contract.
2. All services will be paid only upon receipt of a proper invoice that coincides with the contract upon verification that the services were satisfactorily performed in accordance with the description in the contract. For ongoing services, payment may be made at the end of every month upon receipt of the invoice. Contractors will not be paid in advance.
3. The invoice provided by the contractor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.
4. The District complies with the regulations pertaining to procurement in 2 C.F.R. § 200.318 - .323.
5. The District complies with the provisions in 2 C.F.R. § 200.459 pertaining to allowable professional service costs.
6. The contract will identify the funding source(s) that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
7. The contract will identify and list only reasonable, necessary, and allocable services to be provided in accordance with the funding sources that will be charged.
8. The administrative costs charged to the grant in the contract must be reasonable and must comply with any statutory limitations for administrative costs specified in the federal program funding source.

(V) Applicability to Subcontractors. Vendor agrees that all contracts it awards pursuant to the contract shall be bound by the foregoing terms and conditions.

(W) The Vendor also represents and warrants compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances. It is further acknowledged that Vendor certifies compliance with all provisions, laws, acts, regulations, etc. as

specifically noted below:

1. Americans with Disabilities Act, P. L. 101-336, 42 U.S.C. section 12101, and the regulations effectuating its provisions contained in 28 C.F.R. Parts 35 and 36, 29 C.F.R. Part 1630, and 47 C.F.R. Parts 0 and 64.
2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 C.F.R. Part 100.
3. Title IX of the Education Amendments of 1972, as amended (prohibition of sex discrimination in educational institutions), and the regulations effectuating its provisions contained in 34 C.F.R. Part 106, if the Vendor is an educational institution.
4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on basis of handicapping condition), and the regulations effectuating its provisions contained in 34 C.F.R. Part 104.
5. Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and any regulations issued thereunder, including the provisions contained in 34 C.F.R. Part 110.
6. Family Educational Rights and Privacy Act ("FERPA") of 1975, as amended (ensures access to educational records for students and parents while protecting the privacy of such records), and any regulations issued thereunder, including Privacy Rights of Parents and Students (34 C.F.R. Part 99), if the Vendor is an educational institution (20 U.S.C. 1232g).
7. Section 509 of H.R. 5233, as incorporated by reference in P. L. 99-500 and P. L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress).
8. Pro-Children Act of 2001, which states that no person shall permit smoking within any indoor facility owned or leased or contracted and utilized for the provision of routine or regular kindergarten, elementary, or secondary education or library services to children (P. L. 107-110, Section 4303[a]). In addition, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted and utilized for the provision of regular or routine health care or day care or early childhood development (Head Start) services (P. L. 107-110, Section 4303[b][1]). Any failure to comply with a prohibition in this Act shall be considered to be a violation of this Act, and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty, as determined by the Secretary of Education (P. L. 107-110, Section 4303[e][1]).
9. Buy America Act: DISTRICT, to the greatest extent practicable, has a preference for domestic end goods, products, or materials for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). The Vendor certifies that it is in compliance with the Buy America Act in that each end product purchased under any federally funded supply contract exceeding $2,500.00 is considered to have been substantially produced or manufactured in the United States. End products exempt from this requirement are those for which the cost would be unreasonable, products manufactured in the U.S. that are not of satisfactory quality, or products for which the agency head determines that domestic preference would be inconsistent with the public interest. The Vendor also certifies that documentation will be maintained that documents compliance with this requirement (FAR 25.1-25.2).
10. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act: P.L. 103- 382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and General Education Provisions Act, as amended.
11. Prohibition of Text Messaging and E-mailing while Driving during Official Federal Grant Business: Personnel funded from federal grants and their subcontractors and subgrantees are prohibited from text messaging while driving an organization-owned vehicle, or while driving their own privately owned vehicle during official grant business, or from using organization-supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership On Reducing Text Messaging While Driving," October 1, 2009 (pursuant to provisions attached to federal grants funded by the U.S. Department of Education).
12. Trafficking Victims Protection Act of 2000 ("TVPA"), as amended (22 U.S.C. 7104[g]): In accordance with 2 C.F.R. 175, this award may be terminated unilaterally, without penalty, if Contractor or an employee of Contractor violates any of the applicable prohibitions of this award term through conduct that is either associated with performance under this award or imputed to Contractor using the standards and due process for imputing the conduct of an individual to an organization that are provided in 34 C.F.R. 85.630. Contractor and Contractor's employees may not (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect; (ii) Procure a commercial sex act during the period of time the award is in effect; or (iii) Use forced labor in the performance of the award or subaward.
13. Fair Labor Standards Act (29 U.S.C. 207), as applicable, and their implementing regulations in 29 CFR 500-899.
14. Energy Policy and Conservation Act (42 USC 6321 et seq.; 49 CFR Part 18) and the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the EPCA.

CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS

Proposer agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions as set forth in INSERT REFERENCE TO EDC PAGES ONCE FINAL.

Does Proposer agree? YES STA Initials of Authorized Representative of Proposer

PROPOSER AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES, REGULATIONS, AND ORDINANCES. IT IS FURTHER ACKNOWLEDGED THAT PROPOSER CERTIFIES COMPLIANCE WITH ALL PROVISIONS, LAWS, ACTS, REGULATIONS, ETC. AS SPECIFICALLY NOTED ABOVE.

Proposer's Name: Bath Group, LLC

Address, City, State, and Zip Code: 4110 Rio Bravo, Ste 102 El Paso Texas 79902

Phone Number: 720-703-0152
Fax Number:

Printed Name and Title of Authorized Representative: Steve Alschuler, PE, CCP - Principal of Commissioning

Email Address: salschuler@bathgroup.com

Signature of Authorized Representative: Steve Alschuler
Date: 9/27/23

SPECIAL PROVISIONS
UNDER THE UNIFORM ADMINISTRATIVE REQUIREMENTS,
COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

These Special Provisions are adopted and agreed to as part of the Agreement and are hereby incorporated by reference as if fully set forth therein. To the extent any of these provisions conflict with any provision of the other provisions in the Agreement, these provisions shall take precedence.

I. Definitions Used in these Special Provisions.

1.1 Work. The term "Work" means the deliverables and services required by Agreement, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

1.2 Project. The Project is the Project specified above and includes the Work performed under the Agreement and may be the whole or a part and which may include work completed by the Owner/District and by Separate Contractors.

III. Required Provisions, Disclosures and Certifications.

Contractor acknowledges that federal funds will be utilized to fund the Work under the Underlying Agreement. Contractor warrants and certifies that it will abide by all applicable federal laws, rules, and regulations, executive orders, OMB circulars, policies, procedures and directives applicable to the Contract, terms and conditions of ESSER Grant and any ESSER approved application and provisions of the Underlying Agreement, including but not limited to the following:

2 C.F.R. 200 PROVISIONS

1.1 **TERMINATION.**

1.1.1 Termination for Convenience. Notwithstanding any provision to the contrary contained in the Underlying Contract, if the Underlying Contract is for an amount greater than $10,000, the Owner/District, reserves the right to terminate this Contract for convenience with or without cause, with 7 days' notice in writing to Contractor. In such event, the Contractor will be compensated only for services actually performed and reimbursable expenses actually incurred prior to termination.

1.1.2 Termination for Cause. The Owner/District may terminate the Contract upon not less than seven days' written notice 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.

2.1 CONTRACTUAL REMEDIES. If this Contract is for an amount which exceeds the Simplified Acquisition Threshold currently set at $250,000, the Contractor agrees, in addition to abiding by the Termination provisions in the previous paragraph to comply with all administrative, contractual, or legal remedies and other sanctions and penalties for violation or breach contained in the Contract Documents in instances where the Contractor violates or breaches the Contract terms.

3.1. EQUAL EMPLOYMENT OPPORTUNITY. Contractor represents, warrants and certifies that, during the performance of the Contract.

3.1.1. it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

3.1.2 it will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3.1.3. it will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information;

3.1.4 it will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3.1.5 it will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

3.1.6 it will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

3.1.7 in the event of Contractor's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law; and

3.1.8 it will include the provisions of Sub-paragraphs 3.1.1 through 3.1.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Contractor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or Contractor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect its interests.

4.1 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701–3708). To the extent that this Contract is for a Contract Sum greater than $100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) as follows:

4.1.1 Overtime Requirements. Neither Contractor nor any subcontractor contracting for any part of the contract Work on the Project(s), which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

4.1.2 Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in Sub-paragraph 4.1.1 of this Paragraph the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Sub-paragraph 4.1.1 of this Paragraph, in the sum of $27 for each calendar day

on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Sub-paragraph 4.1.1 of this Paragraph.

4.1.3 Withholding for Unpaid Wages and Liquidated Damages. The Owner/District shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Sub-paragraph 4.1.2 of this Paragraph.

4.1.4 Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Sub-paragraphs 4.1.1 through 4.1.4 of this Paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Sub-paragraphs 4.1.1 through 4.1.4 of this Paragraph.

5.1 CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT. If the Contract Sum of this Contract is greater than $250,000, Contractor agrees as follows:

5.1.1 Clean Air Act.

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

B. The Contractor agrees to report each violation to the Owner/District and understands and agrees that the Owner/District will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by the Federal Emergency Management Agency.

5.1.2. Federal Water Pollution Control Act

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

B. The Contractor agrees to report each violation to the Owner/District and understands and agrees that the Owner/District will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. The Contractor agrees to include these requirements in each subcontract exceeding $250,000 financed in whole or in part with Federal assistance provided by Federal Emergency Management Agency.

6.1 DEBARMENT AND SUSPENSION.

6.1.1 This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. which restricts awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded or ineligible from participation in federal assistance programs and activities. As a result, the Contractor is required to certify that neither the Contractor, any of its principals (defined at 2 C.F.R. § 180.995), nor its affiliates (defined at 2 C.F.R. § 180.905) are "excluded" as defined at 2 C.F.R. § 180.940 or "disqualified" as defined at 2 C.F.R. § 180.935.

6.1.2 Certifications Regarding Compliance. By execution of this Contract, Contractor certifies, that neither the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are "excluded" parties as defined at 2 C.F.R. § 180.940 or "disqualified" as defined at 2 C.F.R. § 180.935 and are not currently listed on the government-wide exclusions in SAM, that neither the Contractor, its principals or Contractor's affiliates are debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractor further certifies and agrees on behalf of the Contractor and its principals to immediately provide written notification to the Owner/District if, at any time prior to award, Respondent or one of its principals learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances, or if Contractor

or one of its principals is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractor certifies that it understands that failure to timely notify the Owner/District of erroneous information or change in circumstances within five (5) business days of the change, shall be grounds for immediate termination, and that termination of Contractor shall not be an election of remedy by the Owner/District.

6.1.3 The certifications in the foregoing Paragraph 8.1 are material representations of fact upon which the Owner/District will place its reliance. The Contractor acknowledges that If it is later determined that Contractor did not comply with 2 CFR pt. 108, Subpart C and CFR Part 3000, subpart C and, knowingly rendered an erroneous certification, in addition to the remedies available to the Owner/District, the Federal Government may pursue available remedies including, but not limited to, suspension and debarment.

6.1.4 The Contractor will comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C during period of this Contract and shall include a provision requiring compliance with these regulations in any contract with any lower tier covered transaction under this Contract.

7.1 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352.

7.1.1 By execution of this Contract, Contractor's authorized representative **certifies** to the best of his or her knowledge, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. Contractor will require the language of this certification to be included in the solicitation and contract award documents for all subawards (subcontracts) at all tiers and that all sub recipients shall certify and disclose accordingly.

7.1.2 The certifications in this Paragraph 7.1 are material representations of fact upon which reliance was placed when this transaction was made or entered into. Submission of these certifications is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

7.1.3 By its execution of this Contract, Contractor certifies and affirms the truthfulness and accuracy of each statement of its certifications in this Paragraph 7.1 and disclosures made in connection with such certifications and understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., providing administrative remedies for false statements, apply to this certification and disclosure, if any.

8. PROCUREMENT OF RECOVERED MATERIALS/SOLID WASTE DISPOSAL ACT. If the Owner/District will purchase the same item or items from the Contractor under this Contract, which were purchased by the Owner/District during the preceding fiscal year, and the prior purchase exceeded $10,000, Contractor agrees that:

8.1.1 In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

A. Competitively within a timeframe providing for compliance with the contract performance schedule.

B. Meeting contract performance requirements; or

C. At a reasonable price.

8.1.2 Information about this requirement, along with the list of EPA designated items, is available at the EPA Comprehensive Procurement Guidelines web site:
https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

9.1 COMPLIANCE WITH MANDATORY PROVISIONS OF STATE ENERGY CONSERVATION PLAN. Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201), generally found in Chapter 447 of the Texas Government Code.

ADDITIONAL ESSER REQUIREMENTS

10.1 CHANGES IN THE WORK. To be eligible for ESSER assistance the cost of a change, modification, change order, or constructive change must be allowable, allocable, within the scope of the Owner/District's ESSER funding and reasonable for the completion of the Project scope. The Agreement documents underlying this Addendum, contain provisions describing how, if at all, changes can be made by either party to alter the method, price, or schedule of the Work without breaching the Contract. In addition to the requirements, in the Contract underling this Addendum, Contractor shall provide written documentation in connection with any Change in the Work (i.e. Change Order, Request for Use of Contingency or other modification) that the change is: (1) within the scope of the Owner/District's ESSER funding, (2) is reasonable under the circumstances and (3) will provide cost documentation of all requested changes, including any markup for overhead and profit as a separate element of the price.

11.1 RETENTION AND ACCESS TO RECORDS.

11.1.1 Retention. In order to comply with retention requirements of both the Texas Education Agency and ESSER, the Contractor shall retain all books, documents, papers, and financial records and supporting documentation, statistical records and all other records of the Contractor, which are directly pertinent to the Contract, the Project and the Work performed under the Contract, for a period of not less than five (5) years after the Owner/District makes final payment under this Contract and all other pending matters between the Parties, or between the Owner/District and ESSER are closed, for the purposes of making and responding to audits, examinations, excerpts, and transcriptions

11.1.2 Access. The following access to records requirements apply to this Contract:

A. The Contractor agrees to provide the Owner/District, the ESSER Administrator, the Comptroller General of the United States, the Texas Department of Public Safety (DPS)/Texas Division of Emergency Management (TDEM), or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract; including, but not limited to, financial records, supporting documents, statistical records, and all other records pertinent to a Federal funding) for the purposes of making audits, examinations, excerpts, and transcriptions ("Required Records").

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to provide the Owner/District, the ESSER Administrator, the Comptroller General of the United States, the Texas Department of Public Safety (DPS)/Texas Division of Emergency Management (TDEM), or any of their authorized representatives access to construction or other work sites pertaining to the Work being completed under the Contract at all reasonable times to review project accomplishments and management control systems and to provide such technical assistance as may be required and to provide all reasonable facilities and assistance for the safety and convenience of these government representatives in the performance of their duties.

12.1 SMALL, MINORITY, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AFFIRMATIVE STEPS. If any subcontracts are to be let by the Contractor, Contractor will be required to shall take affirmative steps to encourage participation by and facilitate contracting with small and minority businesses, women's business enterprises and

labor surplus area business firms as set out in 2 CFR §200.321. The affirmative steps include the following:

12.1.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

12.1.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

12.1.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

12.1.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

12.1.5 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

13.1 NO OBLIGATION BY FEDERAL GOVERNMENT. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to Owner/District, Contractor, or any other party pertaining to any matter resulting from the Contract.

14.1 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to this Contract and the Contractor's actions pertaining to this Contract.

15.1 APPLICABLE DEPT. OF HOMELAND SECURITY STANDARD TERMS AND CONDITIONS FOR 2021.

15.1.2 Age Discrimination Act of 1975. All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors, must comply with the requirements of the *Age Discrimination Act of 1975* (Title 42 U.S. Code, § 6101 *et seq.*), which prohibits discrimination on the basis of age in the Project as it is funded in whole or in part with federal funds.

15.1.3 Americans With Disabilities Act. All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors, must comply with the requirements Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101– 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

15.1.4 Civil Rights Act of 1964 – Title VI. All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors must comply with the requirements of Title VI of the *Civil Rights Act of 1964* (42 U.S.C. § 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in connection with the Project as it is receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

15.1.5 Copyright. All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

15.1.6 Debarment and Suspension. All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

15.1.7 Drug-Free Workplace Regulations. All Project participants, including but not limited to Design Professionals (e.g Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors must comply with

the *Drug-Free Workplace Act of 1988* (41 U.S.C. § 701 *et seq.*), which requires all organizations receiving grants from any federal agency to agree to maintain a drug-free workplace. DHS has adopted the Act's implementing regulations at 2 C.F.R Part 3001.

15.1.7 Duplication of Benefits. Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

15.1.7 False Claims Act and Program Fraud Civil Remedies. All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors must comply with the requirements of 31 U.S.C. § 3729-3733 which prohibits the submission of false or fraudulent claims for payment to the federal government. (See 31 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.)

15.1.8 Federal Debt Status. All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors are required to be non-delinquent in their repayment of any federal debt. examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A129.)

15.1.9 Federal Leadership on Reducing Text Messaging while Driving. All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order (considering new rules and programs, and reevaluating existing programs to prohibit text messaging while driving, and conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving) when on official government business or when performing any work for or on behalf of the federal government.

15.1.10 National Environmental Policy Act. All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors must comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

15.1.11 Limited English Proficiency (Civil Rights Act of 1964, Title VI) All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services.

15.1.12 Lobbying Prohibitions All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors must comply with the 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification..

15.1.13 National Environmental Policy Act All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq. and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in

productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

15.1.14 Patents and Intellectual Property Rights All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

15.1.15 Procurement of Recovered Materials States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

15.1.16 Rehabilitation Act of 1973 All Project participants, including but not limited to Design Professionals (e.g. Architects/Engineers and their subcontractors), Contractors, and all tiers of subcontractors must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973), (codified as amended at 29 U.S.C. § 794.) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

PROPOSER AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES, REGULATIONS, AND ORDINANCES. IT IS FURTHER ACKNOWLEDGED THAT PROPOSER CERTIFIES COMPLIANCE WITH ALL PROVISIONS, LAWS, ACTS, REGULATIONS, ETC. AS SPECIFICALLY NOTED ABOVE.

Proposer's Name: Bath Group, LLC

Address, City, State, and Zip Code: 4110 Rio Bravo, STE 102 El Paso, Texas 79902

Phone Number: 720-703-0152
Fax Number:

Printed Name and Title of Authorized Representative: Steve Alschuler, PE, CCP - Principal of Commissioning

Email Address: salschuler@bathgroup.com

Signature of Authorized Representative: Steve Alschuler

Date: 9/27/23

Chapter 22 Criminal History Records Contractor Certification: Contractor/Subcontractor Employees

Introduction: Section 22.0834 of the Texas Education Code requires entities that contract with school El Paso Independent School Districts to provide services to obtain criminal history records on covered employees. Covered employees with disqualifying criminal histories are prohibited from serving at a school El Paso Independent School District. Service contractors with access to the DPS FACT Clearinghouse under the National Child Protection Act (NCPA) or state criminal history information for employees hired before January 1, 2008, must certify to the El Paso Independent School District that they have complied and must obtain similar certifications from their subcontractors.

The El Paso Independent School District may not obtain criminal histories for contractors. The law requires each contractor to obtain the criminal histories of its covered employees if contractor access is permitted by law. For more information to set up an account for criminal history record information through the DPS FACT Clearinghouse, a contractor should contact the Texas Department of Public Safety's DPS Fingerprint Services Unit by email at fingerprint.service@dps.texas.gov or by phone at 512.424.2474 – Option 6.

Definitions:

Covered employees: Employees of a contractor who have or will have continuing duties related to the service to be performed at the El Paso Independent School District and have or will have direct contact with students. The El Paso Independent School District will be the final arbiter of what constitutes *continuing duties* or *direct contact* with students.

Disqualifying criminal history: (1) a conviction or other criminal history information designated by the El Paso Independent School District; or (2) one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; (c) an equivalent offense under federal law or the laws of another state.

On behalf of Bath Group LLC, a Texas corporation, doing business as Bath Group LLC, I, the undersigned authorized signatory for Contractor, certify to the El Paso Independent School District that [check one]:

☑ None of Contractor's employees are *covered employees*, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that its employees will not become *covered employees*. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

Or

☐ Some or all of Contractor's employees are *covered employees*. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees. Contractor is responsible for all District costs and expenses for the District obtaining the information on the covered employees.

If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

I also certify to the El Paso Independent School District on behalf of Contractor that Contractor has obtained certifications from its subcontractors of compliance with Texas Education Code chapter 22.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

Signature: Steve Alschuler PE Date: 9/21/2023

Title: Principal

RFP ATTACHMENT
CERTIFICATE OF INTERESTED PARTIES – FORM 1295

Under certain circumstances, the District is required to comply with Texas Government Code, Section 2252.908, Disclosure of Interested Parties. If the District is entering into a contract with a "business entity" (defined below) which requires action by the Board of Trustees or which has a value of the contract is at least $1 million, Section 2252.908, requires the District obtain a Disclosure of Interested Parties Form 1295 from the contracting business entity that, at the time the contract is signed binding the parties. The form requires disclosure of each "interested party" to the contract of which the contracting business entity is aware, and must be signed by an authorized agent of the contracting business entity acknowledging that disclosure is made under oath and under penalty of perjury.

Since the Vendor qualifies as a "business entity" and the contract to be entered for this solicitation is for a value greater than $1 Million or requires action or a vote by the Board of Trustees the selected Vendor will be required complete and submit Form 1295. **THE FORM MAY ONLY BE FILED ELECTRONICALLY.**

Form 1295 must be submitted on the form promulgated by the Texas Ethics Commission and in compliance with the Commission's rules, at the time the business entity submits the signed contract to the District. The form must be completed electronically and the process for doing so can be found at the Texas Ethics Commission website at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The filing process will include:

1. **Completing Form 1295 electronically** with the Texas Ethics Commission using the online filing application. The portal for completion of Form 1295, instructions for completion and answers to Frequently Asked Questions can be found at the Texas Ethics Commission website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

2. **Printing a copy of the completed form** (make sure that it has a computer-generated certification number in the "Office Use Only" box)

3. Having an authorized agent of the business entity **sign the form before a notary public.**

4. **Submitting** the completed, signed ~~and notarized~~ Form 1295, showing the certification of filing with your signed contract. Effective January 1, 2018, the person filing a 1295 needs to complete an "unsworn declaration".

The District will then acknowledge the receipt of the filed Form 1295 by notifying the Texas Ethics Commission of the receipt of the filed Form 1295 no later than the 30th day after the date the contract is executed by the District, binding all parties to the Contract. Within seven (7) business days after receiving acknowledgement from the District, the Texas Ethics Commission will post the completed Form 1295 to its website.

A copy of the current Form 1295 is attached hereto for your reference. You are encouraged to contact your own legal counsel with any questions you may have about the process.

The following **definitions** apply:

1. ***"Business Entity"*** means an entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. TEX. GOV'T CODE §2252.908(1).

2. ***"Interested Party"*** means a person:

   a) who has a *controlling interest* in a Business Entity with whom the District contracts; or

   b) who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the Business Entity. TEX. GOV'T CODE § 2252.908(3).

3. ***"Controlling interest"*** means:

   a) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;

   b) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or

   c) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

4. ***"Intermediary"*** means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

   a) receives compensation from the business entity for the person's participation,

   b) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract, and

   c) is not an employee of the business entity. TEX. ETHICS COMM. RULE 46.3(e).

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

1 **Name of business entity filing form, and the city, state and country of the business entity's place of business.**
Bath Group, LLC
El Paso, TX United States

Certificate Number:
2023-1076975

Date Filed:
09/27/2023

2 **Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**
El Paso Independent School District

Date Acknowledged:

3 **Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**
RFQ 23-043
Commissioning Services for HVAC Replacement in High Occupancy Areas of Middle Schools - ESSER Project

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
Stark, William	Corpus Christi, TX United States	X	
Garcia, Javier	El Paso, TX United States	X	
Pena, Micaela	Corpus Christi, TX United States	X	
Saber Power Services, LLC	Rosharon, TX United States	X	
Oaktree Power Opportunities Fund V (Delaware) Holdings, L.P.	Los Angeles, CA United States	X	

5 **Check only if there is NO Interested Party.** ☐

6 **UNSWORN DECLARATION**

My name is William Stark, PE, and my date of birth is 11/18/1967

My address is 5656 S. Staples St., Suite 110 (street), Corpus Christi (city), TX (state), 78411 (zip code), USA (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Nueces County, State of Texas, on the 27 day of September (month), 20 23 (year).

William B Stark

Signature of authorized agent of contracting business entity
(Declarant)

Forms provided by Texas Ethics Commission www.ethics.state.tx.us Version V3.5.1.99923476

Bath
COMMISSIONING

PROPOSAL
COMMISSIONING

September 27, 2023
Luz Favela
ESSER Funding Project Manager
El Paso Independent School District

RE: ESSER HVAC Replacement

Dear Ms. Favela:

Bath Commissioning offers to provide professional services as described below:

Commissioning of the ESSER HVAC Replacement Project
Breakdown Below:

School	Price	School	Price
Charles MS	$ 22,390.00	Armendariz HS	$ 26,290.00
Magoffin MS	$ 20,540.00	Bowie HS	$ 16,490.00
Nolan Richardson MS	$ 20,840.00	El Paso HS	$ 34,340.00
Terrace Hills MS	$ 20,840.00	Jefferson HS	$ 23,490.00
Andress HS	$ 23,640.00	Dr. Josefina Villamil Tinajero PK-8	$ 19,290.00
Irvin HS	$ 17,890.00	Wiggs MS	$ 26,740.00
Canyon Hills MS	$ 25,940.00	Brown MS	$ 17,590.00
Austin HS	$ 19,140.00	Hornedo MS	$ 17,740.00
Burges HS	$ 29,240.00	Coronado MS	$ 16,490.00
Guillen MS	$ 27,340.00	Franklin HS	$ 25,940.00
		Franklin 9th Grade Center	$ 16,490.00

Fee for Project.....$468,690.00

We look forward with great interest to working with you on this exciting project.

Sincerely yours,

Bath Group LLC dba Bath Commissioning

Steve Alschuler

Steve Alschuler P.E.
Principal

MATRIX OF SERVICES

MECHANICAL, ELECTRICAL, PLUMBING COMMISSIONING

	Facilitate writing of OPR	Review OPR as it pertains to Cx	Review BoD as it pertains to Cx	Write Cx Plan	Design Review	Backcheck design review	Write Cx Specification	Review submittals that pertain to Cx	Maintain Issues Log	Chair Cx meeting with GC and Subs	Review RFIs that pertain to Cx	Create Construction Checklists	Verify pre-functional work	Create function test procedures	Witness & Verify function Tests	Verify and document training	Review O& M Manuals	Prepare Cx Report	Prepare Systems Manual	Verify off-season testing	Conduct 10-month warranty site visit8
HVAC Systems & Controls		✓	✓	✓				✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Building Automation System		✓	✓	✓				✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓

Labor/Expenses Breakdown:

- Cx Principal @ $200/hr
  - Initial Setup
  - Conduct Scoping Meeting
  - Invoicing
  - Management
- Cx Engineer @ $150/hour
  - Review Submittals
  - Set up Construction Checklists
  - Write Functional Tests
  - Coordinate Testing with Owner, Subcontractors and Vendors
  - Travel to Jobsite, Test Systems and record Issues
  - Retest Systems after Issues have been addressed
  - Review O&M Manuals
  - Write Final Commissioning Report
  - Conduct 10-month Warranty Review
- Travel Expenses
- CxAlloy Website at $200/month

  - Principal $200/hr
  - Senior Engineer $150/hr
  - Project Engineer/Project Manager $150/hr
  - Designer/Graduate Engineer $135/hr
  - CAD/BIM Technician $125/hr
  - Administrative Assistant $90/hr

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/25/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Bowen, Miclette & Britt Insurance Agency, LLC
2800 North Loop West, Suite 1100
Houston TX 77092

CONTACT NAME: Sara Montoya
PHONE (A/C, No, Ext): 713-880-7100 FAX (A/C, No): 713-880-7166
E-MAIL ADDRESS: smontoya@bmbinc.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: National Fire Ins Co of Hartford	20478
INSURER B: Valley Forge Insurance Co.	20508
INSURER C: Continental Ins Co	35289
INSURER D: Texas Mutual Insurance Company	22945
INSURER E: Homesite Insurance Company of Florida	11156
INSURER F:	

INSURED
Bath Group LLC
dba Bath Group, Bath Engineering, Bath Commissioning and Bath Process Safety
5656 S. Staples St., Suite 110
Corpus Christi TX 78411
SABERPOWER

COVERAGES **CERTIFICATE NUMBER:** 1371909927 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER	Y	Y	7015232047	7/30/2023	7/30/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 1,000,000 $ 100,000 $ 15,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	Y	Y	7034134293	7/30/2023	7/30/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000	Y	Y	70341344326	7/30/2023	7/30/2024	EACH OCCURRENCE AGGREGATE $	$ 5,000,000 $ 5,000,000 $
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	0001310162	7/30/2023	7/30/2024	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
E	2nd Layer Excess Liability			CXP13965239402	7/30/2023	7/30/2024	Each Occurrence Aggregate	5,000,000 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Professional Liability
Berkley Assurance Company
Policy No. PCADB-502274-0723
07/30/2023 - 07/30/2024
Professional Limit: $2,000,000 each claim / $2,000,000 aggregate (claims made)
Deductible $25,000

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in See Attached

CERTIFICATE HOLDER

El Paso Independent School District
Procurement and School Resources
4900 Woodrow Bean Dr
El Paso TX 79924

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2014 ACORD CORPORATION. All rights reserved.

AGENCY CUSTOMER ID: SABERPOWER

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY Bowen, Miclette & Britt Insurance Agency, LLC	NAMED INSURED Bath Group LLC dba Bath Group, Bath Engineering, Bath Commissioning and Bath Process Safety 5656 S. Staples St., Suite 110 Corpus Christi TX 78411
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing the Contact Person as shown above.

General Liability:
Blanket additional insured Ongoing Operations per form # CNA75079XX (10-16)
Blanket additional insured Completed Operations per form # CNA75079XX (10-16)
Blanket waiver of subrogation per form # CNA74705XX (1-15)
Blanket primary/non-contributory per form # CNA75079XX (10-16)

Automobile:
Blanket additional insured per form # CNA63359XX 04 2012
Blanket waiver of subrogation per form # CNA63359XX 04 2012
Blanket primary/non-contributory per form # CNA63359XX 04 2012

Worker's Compensation:
Blanket waiver of subrogation per form # WC 42 03 04
Blanket Alternate Employer per form # WC 00 03 01

Umbrella:
Blanket additional insured per form # CNA75504XX 03 2015
Blanket waiver of subrogation per form # CNA75504XX 03 2015
Blanket primary/non-contributory per form # CNA75504XX 03 2015

2nd Layer Excess:
Blanket additional insured per form # CXS0001 11 20
Blanket waiver of subrogation per form # CXS2050 08/21
Blanket primary/non-contributory per form # CXS2050 08/21

RE: RFQ #23-043, Project #23.532, Commissioning Services – ESSER HVAC Improvements

Certificate Holder Includes: El Paso Independent School District

ACORD 101 (2008/01) © 2008 ACORD CORPORATION. All rights reserved.
The ACORD name and logo are registered marks of ACORD

CNA

CNA PARAMOUNT

Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

I. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:

A. in the performance of your ongoing operations subject to such **written contract**; or

B. in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury** or **property damage** included in the **products-completed operations hazard**, and only if:

1. the **written contract** requires you to provide the additional insured such coverage; and

2. this **coverage part** provides such coverage.

II. But if the **written contract** requires:

A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or

B. additional insured coverage with "arising out of" language; or

C. additional insured coverage to the greatest extent permissible by law;

then paragraph **I.** above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of **your work** that is subject to such **written contract**.

III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

A. coverage broader than required by the **written contract**; or

B. a higher limit of insurance than required by the **written contract**.

IV. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury**, **property damage**, or **personal and advertising injury** arising out of:

A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:

1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

2. supervisory, inspection, architectural or engineering activities; or

B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.

V. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

5002000477015232047510

Primary and Noncontributory Insurance

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph **3.** does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS** is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

A. is currently in effect or becomes effective during the term of this policy; and

B. was executed prior to:

1. the **bodily injury** or **property damage**; or
2. the offense that caused the **personal and advertising injury**;

for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

CNA

CNA PARAMOUNT

Contractors' General Liability Extension Endorsement

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

TABLE OF CONTENTS

1. Additional Insureds
2. Additional Insured - Primary And Non-Contributory To Additional Insured's Insurance
3. Bodily Injury – Expanded Definition
4. Broad Knowledge of Occurrence/ Notice of Occurrence
5. Broad Named Insured
6. Broadened Liability Coverage For Damage To Your Product And Your Work
7. Contractual Liability - Railroads
8. Electronic Data Liability
9. Estates, Legal Representatives and Spouses
10. Expected Or Intended Injury – Exception for Reasonable Force
11. General Aggregate Limits of Insurance – Per Project
12. In Rem Actions
13. Incidental Health Care Malpractice Coverage
14. Joint Ventures/Partnership/Limited Liability Companies
15. Legal Liability – Damage To Premises / Alienated Premises / Property In The Named Insured's Care, Custody or Control
16. Liquor Liability
17. Medical Payments
18. Non-owned Aircraft Coverage
19. Non-owned Watercraft
20. Personal And Advertising Injury – Discrimination or Humiliation
21. Personal And Advertising Injury - Contractual Liability
22. Property Damage - Elevators
23. Supplementary Payments
24. Unintentional Failure To Disclose Hazards
25. Waiver of Subrogation – Blanket
26. Wrap-Up Extension: OCIP CCIP, or Consolidated (Wrap-Up) Insurance Programs

5002000477015232047249 1

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

a. the **Named Insured's** acts or omissions; or

b. the acts or omissions of those acting on the **Named Insured's** behalf,

in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision **2.**, the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph **3.** in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph **4.** below, any organization in which a **Named Insured** has management control:

a. on the effective date of this **Coverage Part**; or

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

A. Paragraph **1.b.** is amended to delete the $250 limit shown for the cost of bail bonds and replace it with a $5,000. limit; and

B. Paragraph **1.d.** is amended to delete the limit of $250 shown for daily loss of earnings and replace it with a $1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage** or **personal and advertising injury** giving rise to the **claim**.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage,** or **personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor

Copyright CNA All Rights Reserved. Includes copyrighted material of Insurance Services Office, Inc., with its permission.

CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,

   b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.

2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

   The insurance afforded by this provision **A.2.**:

   a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.

   b. Does not apply to:

      (1) **Bodily injury** or **property damage** caused by an **accident** that occurred before you acquired or formed the organization; or

      (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.

3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.

4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from $2,000 to $5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from $250 to $500 a day.

© Copyright CNA All Rights Reserved. Includes copyrighted material of the Insurance Services Office, Inc., used with its permission.

C. **Fellow Employee**

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. **PHYSICAL DAMAGE COVERAGE**

A. **Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles**

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. **Transportation Expenses**

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

a. $60 per day, in lieu of $20; subject to

b. $1,800 maximum, in lieu of $600.

C. **Loss of Use Expenses**

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

a. $1,000 maximum, in lieu of $600.

D. **Hired "Autos"**

The following is added to **Section III. Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

a. Any covered **auto** you lease, hire, rent or borrow without a driver; and

b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.

c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or $75,000, whichever is less, minus a $500 deductible for each covered auto. No deductible applies to **loss** caused by fire or lightning.

d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.

e. Such physical damage coverage for hired **autos** will:

(1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.

(2) Such coverage as is provided by this provision will be subject to a limit of $750 per **accident**.

E. **Airbag Coverage**

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

© Copyright CNA All Rights Reserved. Includes copyrighted material of the Insurance Services Office, Inc., used with its permission.

F. **Electronic Equipment**

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories

d. A $100 per occurrence deductible applies to the coverage provided by this provision.

G. **Diminution In Value**

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and

b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.

c. Such coverage as is provided by this provision is limited to a **diminution in value loss** arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.

d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:

(1) $5,000; or

(2) 20% of the **auto's** actual cash value (ACV).

III. **Drive Other Car Coverage – Executive Officers**

The following is added to **Sections II and III:**

1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:

a. An **auto** owned by that "executive officer" or a member of that person's household; or

b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos.**

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

(1) Equal to the greatest of those coverages afforded any covered **auto;** and

(2) Excess over any other collectible insurance.

2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. **BUSINESS AUTO CONDITIONS**

A. **Duties In The Event Of Accident, Claim, Suit Or Loss**

The following is added to **Section IV, Paragraph A.2.a.:**

© Copyright CNA All Rights Reserved. Includes copyrighted material of the Insurance Services Office, Inc., used with its permission.

(4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

(6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily Injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

© Copyright CNA All Rights Reserved. Includes copyrighted material of the Insurance Services Office, Inc., used with its permission.

TexasMutual®
WORKERS' COMPENSATION INSURANCE

WORKERS' COMPENSATION AND EMPLOYERS LIABILITY POLICY

WC 42 03 04 B
Insured copy

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ( ) Specific Waiver
   Name of person or organization
   (X) Blanket Waiver
   Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: ALL TEXAS OPERATIONS
3. Premium:
   The premium charge for this endorsement shall be **2.00** percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.
4. Advance Premium: Included, see Information Page

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)
This endorsement, effective on 7/30/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001310162 of Texas Mutual Insurance Company effective on 7/30/23

Issued to: SABER POWER HOLDINGS LLC

Jeanette Ward

This is not a bill

Authorized representative

NCCI Carrier Code: 29939

7/24/23

PO Box 12058, Austin, TX 78711-2058
texasmutual.com | (800) 859-5995 | Fax (800) 359-0650

TexasMutual®
WORKERS' COMPENSATION INSURANCE

WORKERS' COMPENSATION AND EMPLOYERS LIABILITY POLICY

WC 00 03 01
Insured copy

ALTERNATE EMPLOYER ENDORSEMENT

This endorsement applies only with respect to bodily injury to your employees while in the course of special or temporary employment by the alternate employer in the state named in the Schedule. Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured.

Under Part One (Workers Compensation Insurance) we will reimburse the alternate employer for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the persons entitled to them.

The insurance afforded by this endorsement is not intended to satisfy the alternate employer's duty to secure its obligations under the workers compensation law. We will not file evidence of this insurance on behalf of the alternate employer with any government agency.

We will not ask any other insurer of the alternate employer to share with us a loss covered by this endorsement.

Premium will be charged for your employees while in the course of special or temporary employment by the alternate employer.

The policy may be canceled according to its terms without sending notice to the alternate employer.

Part Four (Your Duties If Injury Occurs) applies to you and the alternate employer. The alternate employer will recognize our right to defend under Parts One and Two and our right to inspect under Part Six.

Schedule

Alternate employer	Address	State of special or temporary employment
V	VARIOUS LOCATIONS IN TEXAS ONLY ANY, TX 99999-9999	TX

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)
This endorsement, effective on 7/30/23 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001310162 of Texas Mutual Insurance Company effective on 7/30/23

Issued to: SABER POWER HOLDINGS LLC

Janette Ward

This is not a bill

Authorized representative

NCCI Carrier Code: 29939

7/24/23

PO Box 12058, Austin, TX 78711-2058
texasmutual.com | (800) 859-5995 | Fax (800) 359-0650

PARAMOUNT EXCESS AND UMBRELLA LIABILITY POLICY

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

The "Insurer" refers to the insurer providing this insurance as set forth on the Declarations of this Policy. Words and phrases that appear in **bold** have special meaning. Refer to the section entitled **DEFINITIONS**.

I. COVERAGES

A. Coverage A - Excess Follow Form Liability

The Insurer will pay on behalf of the **Insured** those **damages** in excess of the applicable **underlying limits**. Coverage hereunder will attach only after the full amount of the applicable **underlying limits** have been exhausted through payment in legal currency of covered loss under all applicable **underlying insurance** and to which this Coverage A applies.

Coverage A under this Policy will then apply in conformance with the provisions of the applicable **underlying insurance** except for the premium, limits of insurance, deductible, retentions, or any defense obligations and any other terms and conditions specifically set forth in this Policy.

Upon exhaustion of the applicable **underlying limits**, the Insurer shall only pay for **damages** in excess of the applicable **underlying limits**. This Coverage A does not provide coverage for any loss not covered by the applicable **underlying insurance** except and to the extent that such loss is not paid under the applicable **underlying insurance** solely by reason of the exhaustion of the applicable **underlying limits** through payment of loss thereunder.

This Coverage applies:

1. if the applicable **underlying insurance** is on an occurrence basis, then only if that which must take place in the policy period of the **underlying insurance** in order to trigger coverage, takes place during this **policy period**; and
2. if the applicable **underlying insurance** is on a claims made basis, then only if:
   a. that which must take place in the **underlying insurance** in order to trigger coverage, takes place after the retroactive date and prior to the end of the **policy period**; and
   b. the **claim** is first made during the **policy period**.

B. Coverage B - Umbrella Liability

The Insurer will pay on behalf of the **Insured** those **damages** in excess of the **retained amount**:

1. that an **Insured** becomes legally obligated to pay because of **bodily injury**, **property damage** or **personal and advertising injury**; or
2. because of liability for **bodily injury** or **property damage** assumed under an **insured contract**, provided the **bodily injury** or **property damage** occurs subsequent to the execution of such **insured contract**;

and provided that:

a. the **bodily injury** or **property damage** occurs during the **policy period**;

b. the **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**;

© Copyright CNA All Rights Reserved.

D. Coverage D - Key Employee Exclusions

With respect to **Coverage D – Key Employee**, this insurance does not apply to any actual or alleged:

1. **Death or Disability**

   death or permanent disability of a **key employee** relating to, or arising out of:

   a. nuclear reaction or radiation or radioactive contamination, however caused;

   b. sickness or disease, including mental illness or mental injury;

   c. pregnancy, childbirth, miscarriage or abortion;

   d. suicide, attempted suicide or self inflicted bodily injury, while sane or insane;

   e. the **key employee's** intoxication, impairment or otherwise being under the influence of alcohol or controlled substances;

   f. war, including undeclared or civil war;

   g. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

   h. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

2. **Other Expenses**

   a. expenses the **Named Insured** incurs which the **Named Insured** would not have incurred if the **Named Insured** had used all reasonable means to:

      i. find a permanent replacement for the **key employee**; and

      ii. reduce or discontinue the **key employee** replacement expense;

      as soon as possible after the **Named Insured's** permanent loss of the services of the **key employee** caused by a **covered accident**.

   b. additional expenses incurred due to the **Named Insured's** loss of the services of a permanent replacement appointed or hired to replace a **key employee**, however caused. However, this exclusion does not apply if the replacement employee is included in the definition as a **key employee** and the **Named Insured's** loss of the services of the replacement employee is caused by a **covered accident**.

IV. WHO IS AN INSURED

The following persons or organizations are **Insureds**.

A. With respect to **Coverage A - Excess Follow Form Liability**, the **Named Insured** and any persons or organizations included as an insured under the provisions of **underlying insurance** are **Insureds**, and then only for the same coverage, except for limits of insurance, afforded under such **underlying insurance**.

B. With respect to the **Coverage B - Umbrella Liability**:

1. If the **Named Insured** is designated in the Declarations of this Policy as:

   a. an individual, the **Named Insured** and the **Named Insured's spouse** are **Insureds**, but only with respect to the conduct of a business of which the **Named Insured** is the sole owner.

   b. a partnership or joint venture, the **Named Insured** is an **Insured**. The **Named Insured's** members, the **Named Insured's** partners, and their spouses are also **Insureds**, but only with respect to the conduct of the **Named Insured's** business.

© Copyright CNA All Rights Reserved.

c. a limited liability company, the **Named Insured** is an **Insured**. The **Named Insured's** members are also **Insureds**, but only with respect to the conduct of the **Named Insured's** business. The **Named Insured's** managers are **Insureds**, but only with respect to their duties as the **Named Insured's** managers.

d. an organization other than a partnership, joint venture or limited liability company, the **Named Insured** is an **Insured**. The **Named Insured's executive officers** and directors are **Insureds**, but only with respect to their duties as the **Named Insured's** officers or directors. The **Named Insured's** stockholders are also **Insureds**, but only with respect to their liability as stockholders.

e. a trust, the **Named Insured** is an **Insured**. The **Named Insured's** trustees are also **Insureds**, but only with respect to their duties as trustees.

2. Each of the following are also **Insureds**:

a. The **Named Insured's volunteer workers** but only while performing duties related to the conduct of the **Named Insured's** business.

b. The **Named Insured's employees**, other than either the **Named Insured's executive officers** (if the **Named Insured** is an organization other than a partnership, joint venture or limited liability company) or the **Named Insured's** managers (if the **Named Insured** is a limited liability company), but only for acts within the scope of their employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business.

However, none of these **employees** or **volunteer workers** are **Insureds** for:

i. **bodily injury** or **personal and advertising injury**:

(a) to the **Named Insured**, to the **Named Insured's** partners or members (if the **Named Insured** is a partnership or joint venture), to the **Named Insured's** members (if the **Named Insured** is a limited liability company), to a **co-employee** while in the course of his or her employment or performing duties related to the conduct of the **Named Insured's** business, or to the **Named Insured's** other **volunteer workers** while performing duties related to the conduct of the **Named Insured's** business;

(b) to the **spouse**, child, parent, brother or sister of that **co-employee** or **volunteer worker** as a consequence of paragraph (i)(a) above;

(c) for which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph i. (a) or (b) above; or

(d) arising out of his or her providing or failing to provide professional health care services.

ii. **property damage** to property:

(a) owned, occupied or used by;

(b) rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

the **Named Insured**, any of the **Named Insured's employees**, **volunteer workers**, any partner or member (if the **Named Insured** is a partnership or joint venture), or any member (if the **Named Insured** is a limited liability company).

C. With respect to the **Coverage C - Crisis Event Management** and the **Coverage D - Key Employee**, the **Named Insured** is the **Insured**.

V. LIMITS OF INSURANCE

A. Multiple Insureds, claims, claimants

The limits of insurance shown in the Declarations of this Policy and the rules below fix the most the

© Copyright CNA All Rights Reserved.

or organization which may be liable to the **Insured** because of injury or damage to which this insurance may also apply; and

vi. will not voluntarily make a payment, except at its own cost, assume any obligation, or incur any expense, other than for first aid, without the Insurer's prior consent.

3. **Cooperation**

With respect to both **Coverage A - Excess Follow Form Liability** and **Coverage B – Umbrella Liability**, the **Named Insured** will cooperate with the Insurer in addressing all **claims** required to be reported to the Insurer in accordance with this paragraph O. **Notice of Claims/Crisis Management Event/Covered Accident**, and refuse, except solely at its own cost, to voluntarily, without the Insurer's approval, make any payment, admit liability, assume any obligation or incur any expense related thereto.

P. **Notices**

Any notices required to be given by an **Insured** shall be submitted in writing to the Insurer at the address set forth in the Declarations of this Policy.

Q. **Other Insurance**

If the **Insured** is entitled to be indemnified or otherwise insured in whole or in part for any **damages** or **defense costs** by any valid and collectible **other insurance** for which the **Insured** otherwise would have been indemnified or otherwise insured in whole or in part by this Policy, the limits of insurance specified in the Declarations of this Policy shall apply in excess of, and shall not contribute to a **claim**, **incident** or such event covered by such **other insurance**.

With respect to **Coverage A – Excess Follow Form Liability** only, if:

a. the **Named Insured** has agreed in writing in a contract or agreement with a person or entity that this insurance would be primary and would not seek contribution from any other insurance available;

b. **Underlying Insurance** includes that person or entity as an additional insured; and

c. **Underlying Insurance** provides coverage on a primary and noncontributory basis as respects that person or entity;

then this insurance is primary to and will not seek contribution from any insurance policy where that person or entity is a named insured.

R. **Premium**

All premium charges under this Policy will be computed according to the Insurer's rules and rating plans that apply at the inception of the current **policy period**. Premium charges may be paid to the Insurer or its authorized representative.

S. **In Rem Actions**

A quasi *in rem* action against any vessel owned or operated by or for a **Named Insured**, or chartered by or for a **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured**.

T. **Separation of Insureds**

Except with respect to the limits of insurance, and any rights or duties specifically assigned in this Policy to the **First Named Insured**, this insurance applies:

1. as if each **Named Insured** were the only **Named Insured**; and

2. separately to each **Insured** against whom a **claim** is made.

U. **Transfer of Interest**

© Copyright CNA All Rights Reserved.

Assignment of interest under this policy shall not bind the Insurer unless its consent is endorsed hereon.

V. **Unintentional Omission**

Based on Insurer's reliance on the **Named Insured's** representations as to existing hazards, if the **Named Insured** should unintentionally fail to disclose all such hazards at the effective date of this Policy, the Insurer will not deny coverage under this Policy because of such failure.

W. **Waiver of Rights of Recovery**

The Insurer waives any right of recovery it may have against any person or organization because of payments the Insurer makes under this Policy if the **Named Insured** has agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

1. is in effect or becomes effective during the **policy period**; and
2. was executed prior to loss.

VII. DEFINITIONS

For purposes of this Policy, words in bold face type, whether expressed in the singular or the plural, have the meaning set forth below.

Advertisement means a notice that is broadcast or published to the general public or specific market segments about the **Named Insured's** goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

A. notices that are published include material placed on the Internet or on similar electronic means of communication; and

B. regarding web-sites, only that part of a web-site that is about the **Named Insured's** goods, products or services for the purposes of attracting customers or supporters is considered an **advertisement**.

Aircraft means any machine or device that is capable of atmospheric flight.

Arbitration proceeding means a formal alternative dispute resolution proceeding or administrative hearing to which an **Insured** is required to submit by statute or court rule or to which an **Insured** has submitted with the Insurer's consent.

Asbestos means the mineral in any form whether or not the asbestos was at any time airborne as a fiber, particle or dust, contained in or formed a part of a product, structure or other real or personal property, carried on clothing, inhaled or ingested, or transmitted by any other means.

Authorized Insured means any **executive officer**, member of the **Named Insured's** risk management or in-house general counsel's office, or any **employee** authorized by the **Named Insured** to give or receive notice of a **claim**.

Auto means:

A. a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment, or

B. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, **auto** does not include **mobile equipment**.

Bodily injury means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the bodily injury, sickness or disease.

Claim means a:

A. **suit**; or

© Copyright CNA All Rights Reserved.

Various provisions of this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout the policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us," and "our" refer to the company providing this insurance. The word "insured" means any other person or organization qualifying as such in SECTION II – WHO IS AN INSURED.

Other words and phrases that appear in quotation marks in this policy have the meanings given them in SECTION V – DEFINITIONS. Unless contradicted in this policy, words and phrases defined by "controlling underlying insurance" have the meanings given them in "controlling underlying insurance."

SECTION I – COVERAGE

1. Insuring Agreement

We will pay on behalf of the insured and in excess of "underlying limits" those sums the insured becomes legally obligated to pay as damages because of "injury or damage" to which this insurance applies. Except as otherwise stated in this policy, this insurance follows the same provisions, exclusions and limitations of the "controlling underlying insurance" in effect at the inception date of that policy. This insurance will not be broader than "controlling underlying insurance."

This insurance only applies if:

a. the "injury or damage" is caused by an "event" in the coverage territory;
b. the "injury or damage" first occurs during the policy period; and
c. "controlling underlying insurance" applies to the "injury or damage" and is exhausted by the payment of, or agreement to pay, judgments or settlements to which this insurance also applies.

The amount we will pay is limited as described in SECTION III – LIMITS OF INSURANCE.

2. Defense

When there is a reasonable expectation that this insurance may be involved in a loss, we may investigate any claim, defend any suit, or associate with any insured or insurer. We may settle any claim at our discretion. We have no duty to investigate claims or defend suits until the expressed and unlimited obligation of all "underlying insurance" terminates because of the exhaustion of "underlying limits" by payment of, or agreement to pay, judgments or settlements. "Defense expenses" will not reduce our limit unless such expenses also reduce "underlying limits." Any duty to defend that we may have ends when we pay or agree to pay our applicable limit.

3. Exclusions

Exclusions applicable to "controlling underlying insurance" also apply to this insurance. Even when "controlling underlying insurance" applies, this insurance does not apply to:

a. Asbestos
"Injury or damage" arising out of the actual, alleged or threatened exposure to "asbestos" or any goods or products containing "asbestos;"
b. Law
Any liability that is or would be imposed under:
1) The Employment Retirement Income Securities Act of 1974 or any amendments thereto, or any similar law;
2) Medical payments, no-fault, personal injury protection or any similar law;
3) Uninsured or underinsured motorist or any similar law; or
4) Workers compensation, disability benefits, unemployment compensation or similar law;
c. Sub-limits
"Injury or damage" to which "underlying insurance" applies but at amounts less than "underlying limits."

SECTION II – WHO IS AN INSURED

1. You are an insured.
2. Any other person or organization who is an insured on "controlling underlying insurance" is an insured on this policy.

However, no one is an insured for broader coverage than that provided by "controlling underlying insurance."

SECTION III – LIMITS OF INSURANCE

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of insureds, claims made, suits brought, or persons or organizations making claims or bringing suits.

1. Aggregate
   The Aggregate Limit shown in the Declarations is the most we will pay for the sum of all damages to which this insurance applies except "injury or damage" arising out of the ownership, maintenance, operation or use, including loading or unloading, of an automobile when such damages are not subject to an Aggregate on "controlling underlying insurance." When all "underlying policies" apply a separate Aggregate Limit to damages because of bodily injury or property damage included in a products-completed operations hazard, the Aggregate Limit will apply in the same manner.
2. Each Event
   Subject to the Aggregate Limit described above, the Each Event Limit shown in the Declarations is the most we will pay for the sum of all damages because of "injury or damage" arising out of any one "event."
3. Anti-Stacking
   If this policy and any previous or subsequent policy we issued to you apply to "injury or damage" from the same "event," the policy with the highest Limits of Insurance will be the only one to apply. This provision does not apply to any policy we may have issued as excess to this insurance.

SECTION IV - CONDITIONS

Conditions applicable to "controlling underlying insurance" also apply to this insurance unless contradicted by the following:

1. Bankruptcy
   Bankruptcy of the insured or any insurer providing "underlying insurance" will not change your or our obligations under this policy.
2. Cancellation
   The first Named Insured may cancel this policy for any reason by returning the policy to us or the Producer shown in the Declarations. We may cancel this policy by providing the first Named Insured written notice:
   a. 10 days in advance if we cancel for non-payment of premium; or
   b. 30 days in advance if we cancel for any other reason.

   If we cancel, the return premium amount will be calculated on a pro rata basis. If you cancel, the return premium amount, subject to the Minimum Earned Premium shown in the Declarations, will be less than pro rata.
   Proof of Mailing will be proof of notice.
3. Duties in the Event of a Claim, Event or Suit
   You must see to it that we are notified in writing as soon as possible of any claim, "event" or suit that may be reasonably expected to involve this insurance. You and any other involved insured have the same duties to us that you have to "controlling underlying insurance."
4. Maintenance of Underlying
   You must immediately notify us of any cancellation, non-renewal or change to "underlying insurance" that broadens the coverage. We will not follow such changes unless and until an endorsement is issued and you have paid the premium due to us.

You must immediately notify us of any reduction of "underlying limits." Reduction of "underlying limits" by the payment of judgments, settlements or defense expenses, to which this insurance applies, will not be considered a failure to comply with this condition. Should you fail to comply with this condition, we will only be liable to the extent we would have been liable had you complied.

5. Non-Renewal
   If we decide not to renew this policy, we will provide advance notice of that decision, in the manner and timeframe required by applicable statute or regulation, to the first Named Insured. Proof of mailing will be proof of notice.
6. Other Insurance
   This insurance is excess of any other valid and collectible insurance available to the insured except insurance purchased specifically to apply in excess of this insurance.
7. Payment of Damages
   When the amount of damages has been determined by judgment or settlement with which we agree and all "underlying insurance" policies have paid, or agreed to pay, their full limits of insurance we will pay, up to our Limits of Insurance, our share of the damages.
8. Separation of Insureds
   Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:
   a. as if each Named Insured were the only Named Insured; and
   b. separately to each insured against whom claim is made or suit is brought.

SECTION V – DEFINITIONS

Words and phrases defined by "controlling underlying insurance" have the meanings given them in "controlling underlying insurance" unless contradicted by the following:

1. "Asbestos" means the mineral in any form.
2. "Controlling underlying insurance" means the policy or policies shown in the Declarations as such that apply to the "injury or damage."
3. "Defense expenses" means amounts we pay to investigate claims or defend suits.
4. "Event" means an occurrence, offense, accident, act, or other "injury or damage" causing event, defined by and to which the "controlling underlying insurance" applies.
5. "Injury or damage" means any bodily injury, property damage, personal and advertising injury, or other injury or damage defined by and to which the "controlling underlying insurance" applies.
6. "Underlying insurance" means the "controlling underlying insurance" policy or policies and any other insurance underlying to or in excess of the "controlling underlying insurance."
7. "Underlying limits" means the amounts shown in the Declarations that must be paid by "underlying insurance" policies before we pay anything. "Underlying limits" are not reduced by damages to which this insurance does not apply.

In Witness Whereof, the issuing Company has caused this policy to be signed below and, where required, countersigned on the Declarations page by an Authorized Representative.

Troy Peter Van Beek, President	Anthony M. Scavongelli, Secretary

Policy Number: CXP13965239402
Effective Date: 07/30/2023 – 07/30/2024

Contractors Endorsement

Blanket Additional Insured - Non-Contributing - Waiver of Subrogation

A. Additional Insureds

When a written contract, signed prior to an "event" requires that you provide Additional Insured coverage with Limits of Insurance greater than "underlying limits" and "controlling underlying insurance" provides such coverage:

1. SECTION II – WHO IS AN INSURED is amended to include the Additional Insured as an insured for the lesser of:
   a. Coverage required by the written contract; or
   b. Coverage provided by this insurance or "controlling underlying insurance";
2. As respects the coverage provided by this endorsement, SECTION III – LIMITS OF INSURANCE is amended to add:
   Limits of Insurance provided to the Additional Insured will be the lesser of:
   a. Limits required by the written contract; or
   b. Limits available under the applicable Limits of Insurance.

B. Primary and Non-Contributing

When a written contract signed prior to an "event" requires, for Limits of Insurance greater than "underlying limits," that this insurance is primary to and will not seek contribution from any other insurance available to the Additional Insured, this insurance will apply in this manner provided that:

1. the Additional Insured is a Named Insured under such other insurance; and
2. all "underlying insurance" applies in the same manner.

C. Waiver of Subrogation

When a written contract signed prior to an "event" requires, for Limits of Insurance greater than "underlying limits," that this insurance waive rights of recovery against the Additional Insured, to the extent required by the contract the following is added to SECTION IV – CONDITIONS:

Transfer of Rights of Recovery
We waive any right of recovery we may have against the Additional Insured because of any payment we make under this policy. Such waiver by us applies only to the extent that you have waived your right of recovery prior to loss.

All other terms and conditions remain unchanged.

CXS 20 50 08 21	Contains copyrighted material of the Insurance Services Office, Inc. with its permission.	Page 1 of 1