

# Reagan County Independent School District



**REQUEST FOR COMPETITIVE SEALED PROPOSALS FOR  
PROGRAM MANAGER  
2023-24 Bond Projects  
RFP No. 2023-003**

***SUBMITTAL DEADLINE:  
April 6, 2023, 1:00 p.m.***

Reagan County Independent School District  
1111 E. Twelfth Street  
Big Lake, TX 76932

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## SECTION 1 – GENERAL INFORMATION & REQUIREMENTS

### 1.1 GENERAL INFORMATION.

The Reagan County Independent School District, hereinafter referred to as “Reagan County ISD,” “District” or “Owner” is seeking competitive sealed proposals (“proposals” or “responses”) in accordance with Texas Education Code §44.031 from qualified individuals or firms for a Program Manager (“PM” or “Program Manager”) to conduct capital project coordination and program management services for the District’s 2023-24 Bond Projects (the “Bond Program” or “Project”), which can be viewed online at: [www.reagancountyisd.net](http://www.reagancountyisd.net). The District desires to engage a single individual or entity to provide a complete range of professional consulting services to support the District’s Bond Program, as described below, and serve as the District’s agent and an extension of the District's construction representative.

This RFP seeks a PM to provide services for the 2023-24 Bond Projects, including without limitation the following: renovation of the existing middle school, construction of new career and technology buildings, construction of new gymnasium, renovation of school houses, construction of new school houses; paving and resurfacing parking lots, and concrete work throughout the District.

1.2 PUBLIC INFORMATION. All information, documentation, and other materials submitted in response to this Request for Proposals (“RFP”) are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, *et seq.*) after a contract is awarded. The Owner strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFP and proposal information. A respondent who believes any information is confidential, trade secrets or otherwise excepted from disclosure under the Texas Public Information Act must clearly mark such information as “CONFIDENTIAL” and provide written authority to support the contention that such information may not be disclosed. Failure to identify information as CONFIDENTIAL is considered an acknowledgement by the Respondent that all information provided is public. Notwithstanding the foregoing, the identification of such materials as confidential shall not require the District to act in contravention of its obligation to comply with the Texas Public Information Act and the Respondent releases the District from any liability or responsibility for maintaining the confidentiality of such documents or information.

1.3 CLARIFICATIONS AND INTERPRETATIONS. Any clarifications or interpretations of this RFP that materially affect or change its requirements will be sent by the District as an addendum to the RFP. All such addenda issued by the District before the responses are due shall become a part of the RFP, and respondents shall acknowledge receipt of and incorporate each addendum in its response.

Respondents shall consider only those clarifications and interpretations that the District issues by addenda three (3) days prior to the submittal deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on the District and should not be relied on in preparing responses.

### 1.4 SUBMISSION OF QUALIFICATIONS AND PROPOSALS.

1.4.1 Deadline. The District will receive qualifications and proposals to this RFP 2023-003 (“Proposals”) at the time described below.

April 6, 2023, 1:00PM – Superintendent’s Office, 1111 E. Twelfth Street, Big Lake, TX, 76932 (the “Deadline”).

Opening of the sealed proposals will be immediately following the deadline. Sealed proposals will be under evaluation until final selection is determined by the District’s Board of Trustees.

- 1.4.2 Submit one (1) original, one (1) identical hard copy, and one (1) electronic copy on a USB drive of the Proposal to:

Reagan County ISD  
ATTN: Eric Hallmark, Superintendent  
1111 E. Twelfth Street  
Big Lake, TX 76932

- 1.4.3 Late received Proposals will be returned to the respondent unopened and it is the respondent’s responsibility to make sure all Proposals are delivered before the Deadline. The District is not responsible for late deliveries.
- 1.4.4 The District will NOT acknowledge or receive Proposals that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).
- 1.4.5 Properly submitted Proposals will not be returned to respondents.
- 1.4.6 Qualification and Proposal materials must be enclosed in a sealed opaque envelope (box or container) and properly marked with the “RFP #2023-003, Reagan County ISD 2023-24 Bond Projects - Program Manager” and the return address of the respondent.

- 1.5 POINT-OF-CONTACT. The District designates the following person as its representative and Point-of-Contact for this RFP. Respondents shall restrict all contact with the District and direct all questions regarding this RFP to the Point-of-Contact person.

Eric Hallmark, Superintendent  
Mailing Address: 1111 E. Twelfth Street, Big Lake, TX 76932  
Physical Address for Hand Delivery: same as mailing address  
Phone: 325-884-3705 (office)  
E-mail: eric.hallmark@rcisd.net

- 1.6 EVALUATION OF PROPOSALS. The decision to select the PM will be based on the proposal most advantageous to the District based on weighted criteria set forth at Section 3.1 herein. Price is a single factor to be considered. Award(s) may be made other than the lowest price proposal. Should a proposal contain conflicting terms, the District reserves the right to enforce the term or terms in such proposal that it determines to be in the best interest of the District, and the Respondent agrees to be bound by the terms it has proposed that are most favorable to the District. All properly submitted Proposals will be reviewed, evaluated, and ranked by the District’s evaluation committee (the “Committee”) appointed by the District’s administration, which will submit its recommendation to the Board of trustees for its consideration.
- 1.7 DISTRICT’S RESERVATION OF RIGHTS. The District may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. The District reserves the right to divide the Project into multiple parts, to reject any and all Proposals and re-solicit for new Proposals, or

to reject any and all responses and temporarily or permanently abandon the Project. District makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFP for the Project or any portion of the Project and no such representation is intended or should be inferred by the issuance of this RFP.

- 1.8 ACCEPTANCE OF EVALUATION METHODOLOGY. By submitting its Proposal in response to this RFP, respondent accepts the evaluation process and acknowledges and accepts that determination of the respondent who provides the best value for the District will require subjective judgments by the District.
- 1.9 LOBBYING OR INFLUENCE PROHIBITED. In order to ensure the integrity of the selection process, respondent's employees, officers, agents, or other representatives shall not lobby or attempt to influence a vote or recommendation related to the respondent's Proposal, directly or indirectly, through any contact with a member of the Board of Trustees, other District officials or employees from the date of this RFP until a contract is executed.
- 1.10 NO REIMBURSEMENT FOR COSTS. Respondent acknowledges and accepts that any costs incurred from the respondent's participation in this RFP shall be at the sole risk and responsibility of the respondent.

## SECTION 2 – EXECUTIVE SUMMARY

Under its Bond Program, the District intends to perform all types of facilities capital improvement projects, including construction, renovation, remodel, retrofit, and an array of other work under the resulting contracts. The District desires the selected respondent to manage and administer such facility capital improvements described in the Bond Program. The District seeks a highly qualified firm or individual (“firm” hereafter) for program management services. The expectations for the PM include leadership and management, design oversight, construction oversight and reporting adherence or deviation to the Bond Program schedule, budget, and quality goals. The PM will develop requirements for budget, schedule, and construction administration for each project of the Bond Program to ensure all design and construction teams adhere to the same high-quality standard.

Information about the Bond Program can be found on the Reagan County Independent School District website: <https://www.reagancountyisd.net>

- 2.1 PROJECT OVERVIEW. The Bond Program (see: <https://www.reagancountyisd.net>), totaling approximately \$68,800 million was presented to the District’s voters for approval and passed on November 8, 2022. The Bond Program includes, without limitation, the following: renovation of the existing middle school, construction of new career and technology buildings, construction of new gymnasium, renovation of schoolhouses, construction of new school houses; paving and resurfacing parking lots, and concrete work throughout the District.

The District intends to select a PM to perform program management services to assist in the implementation and management of the Bond Program. The selected applicant will join a Project Team which will include District administration, the construction manager-agent, architects, engineers, designers, planners and construction contractors, all of whom will be engaged in a cooperative effort to provide the District with successful and cost-effective solutions.

Due to the magnitude of the Bond Program, the District desires the use of a Program Manager to work with the District and its construction manager-agent and architect/engineer during the design phases, and to provide the services generally described below during construction activities. The District is seeking a relationship with the PM to serve as the District’s agent throughout the entire Bond Program, which will take approximately 36 months.

Program management services may include overall management services, preparing requests for qualifications, preparing requests for proposals, development of scopes of work, development of construction standards, scheduling and estimating, procurement and negotiations, design review (with regard to costs, schedule and constructability), quality assurance, construction management oversight, on-site inspection, review/approve contractor pay applications, review/approve change orders, construction close out, move and relocation coordination, overall contract management, and community relations. During contract negotiations the District will refine the services that will be used and included in the contract. The District is open to alternative delivery strategies if they result in a higher quality product, a more streamlined design and construction process, and increased value to the District.

- 2.2 SCOPE OF SERVICES SUMMARY. It is anticipated that the selected PM will manage the implantation of the capital projects described in the Bond Program. The PM will not serve as a general construction contractor, architect, or an engineer or construction manager-at-risk or construction manager-agent for the Bond Program or any particular Project. The full contracted scope of work shall be negotiated with the selected PM based on the services proposed by such

respondent and/or required by the District. The PM's response to the RFP will be the basis of determining the PM who offers the best value to the District.

It is essential for the PM selected to recognize the need to preserve the collegial and participative culture of the community while effectively and efficiently completing projects. It is critical that the PM blend the authority delegated to the PM by the District with the District's non-delegable responsibilities to form an efficient and effective working relationship.

It is anticipated that the contract term for contract(s) awarded resulting from this solicitation, if any, will be over the period for all Bond Program construction to be complete. The District intends to contract with a single firm or individual.

If the District and successful respondent are unable to negotiate and sign a Contract, the District reserves the right to end negotiations with such respondent and begin negotiations with the next highest ranked respondent or re-issue this RFP to seek alternative proposals.

2.3 DETAILED SCOPE OF SERVICES. The selected PM will be responsible for innovative, yet proven, processes that will result in a high-quality product, public accountability and efficient use of taxpayer funds. While the following tasks represent the majority of the management and consulting activities anticipated, this is not a comprehensive list of services. The District is looking for a PM that has solutions for these services that meet the District's objectives, as well as other ideas and recommendations that could improve the Bond Program. The District will evaluate respondents on their ability to provide the following services and also on their unique ideas for improving Bond Program quality, reducing schedules and identifying cost savings opportunities:

- Development of Scopes of Work and Budgets
- Development of Contracts / RFPs
- Scheduling
- Bidding, Evaluations and Negotiations
- Management / Coordination of Design Teams and Design Review and Verification
- Cost Verification / Estimating
- Value Engineering as required
- Coordinate / Track Agency Approvals
- Quality Assurance / Deficiency Resolution
- Contract Management
- On Site Inspection / Documentation
- Payment Approvals / All Bond Funds
- Construction and Contract Change Orders and Close Out
- Move and Relocation Coordination
- Overall Document Management
- Post Occupancy Evaluation / Warranty Tracking
- Community and School Relations

The PM shall be available full-time, with appropriate support available to be on-site, as needed, during the entirety of the Bond Program. Membership of this Team shall be stable, and any proposed personnel changes must be approved in advance by the District Representative.

#### **External Communication**

The PM shall, as directed by the Superintendent, make presentations to and answer questions from the Board of Trustees and Bond Program stakeholders. The PM shall design, help the District establish and maintain a District Bond Program web site for informing the public on project specific



progress/status. The District shall approve of the design and information before it is made available to the public.

### **Internal Communication**

The PM shall put in place a system of at least weekly updates and reporting to the Superintendent. The purpose of this protocol is to keep the District apprised of the status of the Bond Program, particularly issues requiring his immediate attention. For all construction-related meetings, the PM will prepare and distribute meeting notes (minutes) and ensure coordination of issues raised during the meetings with responsible project stakeholders. Meeting notes (minutes) will be issued to all parties concerned no later than three working days following the date of the meeting.

The PM shall prepare a monthly Project Report in a single volume to include the following information for each project: Executive Summary Narrative; Executive Summary Cost Report; Master Schedule; Summary of District Occupied Space and Scheduling of Intermittent Moves; Summary of Equipment Planning and Procurement. The Project Specific Report shall include a Summary Report and Progress Report; and the presentation of postconstruction maintenance schedules and procedures, as applicable. The PM shall participate in update meetings with District as directed by the Superintendent.

### **Change Control**

The PM will establish and maintain a project Change Control System that will provide for the management, tracking, and documentation of all changes to a project. The design of the Change Control System must be approved by the Superintendent, and will be changed, if necessary, at the discretion of the Superintendent. The PM will review, analyze, and make recommendations regarding cost, schedule, and quality impacts of all changes in scope submitted for consideration by the District. The PM will analyze and negotiate both the scope and costs of all changes for the Superintendent's approval, and on at least a monthly basis, will report to the Superintendent on the impact of all changes on project cost, schedule, and quality.

- 2.4 CONTRACTUAL RELATIONSHIP. It is anticipated that the District and the PM will negotiate and enter into an AIA Document C171-2013, as amended by the District, a draft of which is attached hereto. This is the form of agreement the District intends to use. Any objections to this form should be submitted with the response; material deviations may not be considered.
- 2.5 REPORTING. The PM will report directly to Reagan County ISD's Superintendent of Schools, but may also interact with designee(s) of the Superintendent and the Board of Trustees.

## SECTION 3 – REQUIREMENTS FOR PROPOSALS

TIME IS OF THE ESSENCE. The District intends to rank and select respondents no later than April 30, 2023, and to approve the contract with the selected respondent at a Board meeting not later than 30 days following ranking and selection. The respondent who contracts with the District for the services set out herein must be capable of beginning work with the District immediately.

### Selection Schedule:<sup>1</sup>

First Published Notice of RFP:	March 23, 2023
Second Published Notice for RFP:	March 30, 2023
Due date for RFP Responses:	April 6, 2023 at 1:00 PM
Notify Shortlisted Firms (if needed):	April 10, 2023 by 5:00 PM
Committee Interview Firms (if needed) by:	April 12-14, 2023
Board to Rank/Select PM:	by April 30, 2023
Selected PM Notified and Begin Negotiations:	Immediately following selection by Board
Board Action on PM Contract by:	By May 15, 2023

Respondents shall carefully read the information contained in the following criteria and submit a complete response to all questions in Section 3 and formatted as directed in Section 4. Incomplete Proposals will be considered non-responsive and may be subject to rejection. Assessment score is shown adjacent to each title.

The Committee will review all Proposals to determine which respondents have qualified for consideration and shall evaluate firms according to the criteria stated herein. The Committee’s evaluations will be based on all available information, including information provided in respondent’s response, reports, discussions, reference checks, and other appropriate checks. The highest rated respondent(s) evaluated by the Committee may be invited to be interviewed. Proposals will be evaluated using the following criteria and weights:

### 3.1 CRITERIA.

	<u>CRITERIA</u>	<u>AVAILABLE POINTS</u>
1.	Purchase price	0 – 20 points
2.	Reputation of the Respondent and of the Respondent’s goods or services	0 – 20 points
3.	Quality of the Respondent’s goods or services	0 – 10 points
4.	Extent to which the goods or services meet the District’s needs	0 – 10 points
5.	Respondent’s past relationship with the District	0 – 5 points
6.	Impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses (women or minority owned businesses)	0 – 5 points
7.	Total long-term cost to the District to acquire the Respondent’s goods or services	0 – 5 points

<sup>1</sup> The District reserves the ability to adjust this schedule as needed to fit the District’s needs.

<u>CRITERIA</u>	<u>AVAILABLE POINTS</u>
8. Whether Respondent or Respondent's parent company/majority owner has its principal place of business in Texas or employs 500 or more persons in Texas (n/a under federal guidelines)	0 – 5 points
9. Other relevant factors:	
a. Respondent's ability to be onsite as needed and when needed	0 – 10 points
b. Respondent's availability to provide services for duration of the Bond Program	0 – 10 points
	<hr/>
TOTAL	100 points

3.2 BACKGROUND INFORMATION CONSIDERED FOR EVALUATION.

- 3.2.1. Provide a brief history of the Respondent and consultant(s) proposed for the project including when the firms were established, type of ownership and office locations. Describe the qualifications and experience of the firm and its ability to provide the services identified in this RFP. If more than one office is listed indicate the office that will manage the project. If the firm has changed name or ownership within the last three (3) years indicate the former name.
- 3.2.2. Provide a statement on the availability and commitment of the Respondent and its principal(s) and assigned professionals to undertake the project.
- 3.2.3. Provide a statement of interest for the project including a narrative describing the Respondent's unique qualifications as they pertain to this particular program.
- 3.2.4. Identify key personnel to work with the District who will provide the services described in this RFP. Please identify the role of each person identified and provide a resume of their experience, qualifications, education, training and other credentials.
- 3.2.5. Provide the following information for the firm:
- Legal Name of the company as registered with the Secretary of State of Texas
  - Address of the office that will be providing services
  - Number of years in business
  - Type of Operation (Individual, Partnership, Corporation, Joint Venture, etc.)
  - Number of Employees by skill group
- 3.2.6. Is your firm pending, currently, or within the past 5 years been involved in litigation or claims filed against your company because of services rendered? If yes, specify date(s), details, circumstances, and resolution.
- 3.2.7. Is your firm currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.

- 3.2.8. Does any relationship exist by relative, business associate, capital funding agreement, or any other such kinship between your firm and any District employee, officer or Trustee? If so, please explain.
- 3.2.9. Provide a claims history under professional malpractice insurance for the past five (5) years for your firm and any team members proposed to provide professional architectural or engineering related services.
- 3.2.10. Provide an overview of a maximum of five (5) projects involving new construction and renovation for which you have provided PM or construction services in the last 10 years ranging in size of \$ 15,000,000 - \$ 80,000,000. Please provide:
- Project name, location
  - Project size, cost (design budget vs. completed project cost with any reasoning regarding variance)
  - Project overview/description including any unique characteristics
  - Description of services provided for the project
  - Name of Project Principal/Manager (individual responsible to the Client for the overall success of the program)
  - Name of the Project Planner/Manager, if different than above (individual responsible for coordinating the day to day work)
  - The Client's name and contact information as a reference. References shall be considered relevant based on specific project participation and experience with the Respondent.

Reagan County Independent School District may contact references during any part of this process.

The chemistry and comfort of the Bond Program Team is vital to the selection of the PM. The selected PM should be able to communicate openly and effectively with the District's Board of Trustees, administrators and stakeholders for each project. It is essential that the PM recognize the need to preserve the collegial and participative culture of the school environment while effectively and efficiently completing projects.

All responses shall be evaluated and ranked on the criteria identified above, and final selection will be based upon the criteria and weights provided herein in compliance with Texas Education Code Sections 44.031 and 44.0352.

## **SECTION 4 – FORMAT FOR PROPOSALS AND TERMS**

### **4.1 GENERAL INSTRUCTIONS.**

- 4.1.1 Proposals shall be prepared simply and economically, providing a straightforward, concise description of the respondent's ability to meet the requirements of this RFP. Emphasis shall be on completeness, clarity of content, responsiveness to the requirements, and an understanding of District's needs.
- 4.1.3 Respondents shall carefully read the information contained in this RFP and submit a complete response to all requirements and questions as directed.
- 4.1.4 Proposals and any other information submitted by respondents in response to this RFP shall become the property of the District.
- 4.1.5 The District will not compensate respondents for any expenses incurred in Proposal preparation or for any presentations that may be made, unless agreed to in writing in advance or required by law. Respondents submit Proposals at their own risk and expense.
- 4.1.6 Proposals that contain conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to rejection by the District.
- 4.1.7 The District makes no representations of any kind that an award will be made as a result of this RFP. The District reserves the right to accept or reject any or all Proposals, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFP when deemed to be in District's best interest.
- 4.1.8 Proposals shall consist of answers to questions identified in Section 3 of the RFP. It is not necessary to repeat the question in the Proposals; however, please reference the question number with the corresponding answer.
- 4.1.9 Failure to comply with all requirements contained in this Request for Proposals may result in the rejection of a Proposal.

### **4.2. TERMS AND CONDITIONS.**

- 4.2.1 This RFP and any resulting award(s) shall be interpreted within the laws of the State of Texas. Mandatory venue for any legal action filed relative to this RFP or any resulting contract shall be in the appropriate state district court with jurisdiction in Reagan County, Texas.
- 4.2.2 In the event that any one or more of the provisions contained in this RFP (or resulting contract) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provisions shall not affect any other provision hereof, and this RFP (or any resulting contract) shall be construed as if the invalid, illegal or unenforceable provision(s) had never been contained herein.
- 4.2.3 The District reserves the right to cancel any contract resulting from this RFP at any time, for any reason (or for no reason) with prior written notice to the PM. Any notice required or permitted to be delivered to the PM shall be deemed to be delivered when sent via email or US Postal service by registered or certified mail, return receipt requested, postage

prepaid, and addressed to the PM's email or U.S. mail address appearing on the face of its response to this RFP (or as subsequently revised or changed by PM). Any compensation due the PM will be limited to services performed and accepted by the District prior to the date of such termination.

- 4.2.4 The respondent selected shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence, and must provide workers' compensation insurance, as required by the Texas Labor Code. The District reserves the right to require additional coverage, as needed, depending on the size and scope of a particular project of the Bond Program.
- 4.2.5 Pursuant to Texas Government Code, Chapter 2271, as amended, if respondent is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with District is \$100,000 or more, the respondent represents and warrants to the District that the **respondent does not boycott Israel** and will not boycott Israel during the term of any resulting contract. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 4.2.6 Pursuant to Texas Government Code, Chapter 2274, if respondent is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit, which has ten (10) or more full-time employees and the value of the contract with District is \$100,000 or more, the respondent represents and warrants to the District that the **respondent does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association** and will not discriminate against a firearm entity or firearm trade association during the term of any contract resulting from the solicitation. A "firearm entity" means a firearm, firearm accessory, or ammunition manufacture, distribute, wholesaler, supplier or retailer, or a sport shooting range. A "firearm trade association" means any person, corporation, unincorporated association, federation, business league or business organization that is not organized or operated for profit for which none of its net earning inures to the benefit of any private shareholder or an individual that has two or more firearm entities as members, or is exempt for federal income taxation under Section 501(c) of the Internal Revenue Code.
- 4.2.7 Pursuant to Texas Government Code, Chapter 2274, if respondent is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit, which has ten (10) or more full-time employees and the value of the contract with District is \$100,000 or more, the respondent represents and warrants to the District that the **respondent does not boycott energy companies** and will not boycott energy companies

during the term of any contract resulting from the solicitation. “Boycott energy companies” means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations with a company because the company engages in the exploration, production utilization, transportation, sale or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law.

- 4.2.8 In accordance with Texas Government Code, Chapter 2252, Subchapter F, the District is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under Texas Government Code Sections 806.051, 807.051, or 2252.153. By submitting a response to this RFP, respondent certifies to the District that it is not a listed company under any of those Texas Government Code provisions, and thereby voluntarily and knowingly acknowledges and agrees that any contract resulting from its Response shall be null and void should facts arise leading the District to believe that the respondent was a listed company at the time of this procurement.
- 4.2.9 Effective January 1, 2016, Texas governmental entities must comply with the “Disclosure of Interested Parties” mandated by Texas HB 1295, as implemented by the Texas Ethics Commission. Briefly stated, all contracts requiring an action or vote by the governing body of the entity or agency before the contract may be signed (regardless of the dollar amount) or has a value of at least \$1 million will require the on-line completion of Form 1295 “Certificate of Interested Parties,” per Texas Government Code § 2252.908. Form 1295 is also required for any and all contract amendments, extensions or renewals. Therefore, the selected respondent will be required to create, electronically file, and present such Form 1295 to the District using the Texas Ethics Commission’s online filing application at final execution of any contract with the District.
- 4.2.8 Pursuant to Texas Government Code 552, Subchapter J, the selected respondent will be bound by the following terms if the resulting contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the District or if the resulting contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to the resulting contract that is in the possession or custody of the respondent and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the respondent that respondent provide that information to the District.

The selected respondent must:

1. Preserve all contracting information related to any resulting Contract as provided by the records retention requirements applicable to the District for the duration of any resulting Contract;
2. Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the respondent upon request of the District; and,
3. On completion of any resulting Contract, either:
  - a. Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the respondent; or

- b. Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.
- c. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the respondent agrees that the contract can be terminated if the respondent knowingly or intentionally fails to comply with the requirements of that subchapter.
- d. Further, under Texas Government Code Section 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.
- e. If a respondent fails to provide to the District the requested information, Texas Government Code Section 552.373 requires the District to notify the respondent in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if respondent fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

4.2.10 The respondent verifies by its signature below that **it is not an abortion provider or an affiliate of abortion providers.**

4.2.11 The resulting contract from this RFP is subject to approval by the Reagan County Independent School District's Board of Trustees. Neither this RFP nor the response from any respondent shall create a contractual relationship that would bind the District until such time as both the District and the selected respondent sign a written contract, which includes, without limitation, the terms required by the District as set out in this RFP.

4.2.12 No response may be changed, amended, or modified after it has been submitted. However, a response may be withdrawn and resubmitted any time prior to the response deadline.

4.2.13 **OBLIGATIONS AND WAIVER OF CLAIMS. THIS RFP IS NOT A CONTRACT OR AN OFFER TO CONTRACT. THIS RFP DOES NOT OBLIGATE THE DISTRICT TO AWARD A CONTRACT OR PAY ANY COSTS INCURRED BY THE RESPONDENT IN THE PREPARATION AND SUBMITTAL OF A PROPOSAL. THE DISTRICT, IN ITS SOLE DISCRETION, RESERVES THE RIGHT TO ACCEPT ANY PROPOSAL AND/OR REJECT ANY AND ALL PROPOSALS OR A PART OF A PROPOSAL, WITHOUT REASON OR CAUSE. THE DISTRICT RESERVES THE RIGHT TO REJECT ANY NONRESPONSIVE OR CONDITIONAL PROPOSALS. THE DISTRICT RESERVES THE RIGHT TO WAIVE ANY INFORMALITIES, IRREGULARITIES AND/OR TECHNICALITIES IN THIS RFP AND DOCUMENTS SUBMITTED.**

BY TENDERING A RESPONSE TO THE DISTRICT'S RFP, THE RESPONDENT ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REQUIREMENTS FOR SUBMITTING A RESPONSE AND THE PROCESS USED BY THE DISTRICT FOR SELECTING THE PM THAT IT BELIEVES PROVIDES THE BEST VALUE FOR THE DISTRICT BASED ON CRITERIA HEREIN. FURTHER, BY SUBMITTING A RESPONSE, THE PM FULLY, VOLUNTARILY AND UNDERSTANDINGLY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST THE DISTRICT AND ANY OF ITS TRUSTEES, OFFICERS, AGENTS AND/OR EMPLOYEES THAT COULD ARISE OUT OF THE ADMINISTRATION, EVALUATION, RECOMMENDATION OR SELECTION OF ANY PROPOSAL SUBMITTED PURSUANT TO THE DISTRICT'S RFP.



## **SECTION 5 – REQUIRED FORMS AND VERIFICATIONS**

1. Confidentiality Declaration Form
2. Felony Conviction Notice Requirements
3. Criminal History Check Requirements
4. Non-Collusive Bidding Certificate
5. Legal Compliance
6. Conflict of Interest Disclosure Statement
7. Notice of No Conflict of Interest
8. Trustee Campaign Contribution Disclosure Form
9. Form 1295
10. Verification of Compliance with State and Federal Laws
11. Historically Underutilized Business Information Questionnaire
12. Proposal Form

**ALL REQUIRED FORMS MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT’S PROPOSAL, OR THE PROPOSAL WILL BE DEEMED NONRESPONSIVE.**

**CONFIDENTIALITY DECLARATION FORM**

**CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUEST FOR REAGAN COUNTY ISD IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552**

If you consider any portion of your proposal as confidential information and not subject to disclosure pursuant to Chapter 552 Tex. Gov't Code or other laws, you **must make a copy** of all claimed confidential materials within your proposal and put this COMPLETED form as a coversheet to said materials and place this completed form and the copied materials in a separate envelope and include the confidential materials envelope with your proposal submission. *(The envelope will not be opened unless a Public Information Request is made. You must include the confidential information in the submitted proposal as well. The copy in the envelope is to show RCISD which material in your proposal you deem confidential only in the event of a Public Information Request.)* You must place the following wording that is between the dotted lines on the outside of the envelope containing the copies of the confidential materials. You may copy, complete and affix the following to the envelope containing the copies of the confidential materials. the District will follow procedures of controlling statute(s) regarding any claim of confidentiality. Pricing of solicited products or service may be deemed as public information under Chapter 552 Tex. Gov't Code.

\*\*\*\*\*  
This envelope contains material for our proposal that I classify and deem confidential under Tex. Gov't Code § 552 and I invoke my statutory rights to said confidential treatment of the enclosed materials:

\_\_\_\_\_  
Name of company claiming confidential status of material

\_\_\_\_\_  
Printed Name and Signature of authorized company officer claiming confidential status of material

\_\_\_\_\_  
Address City State Zip Phone

**ENCLOSED ARE COPIES OF \_\_\_\_\_ PAGES OF CONFIDENTIAL MATERIAL FROM OUR RESPONSE TO RFP # 2023-003**

\*\*\*\*\*  
**Express Waiver: I desire to expressly waive our claim of confidentiality of any information contained within our response to the competitive procurement process by completing the following and submitting this sheet with our response TO the District procurement process (e.g. RFP, Bid, CSP, etc.).**

\_\_\_\_\_  
Name of company claiming confidential status of material

\_\_\_\_\_  
Printed Name and Signature of authorized company officer claiming confidential status of material

\_\_\_\_\_  
Address City State Zip Phone

**THIS EXPRESS WAIVER IS FOR RESPONSE TO RFP #2023-003**

**FELONY CONVICTION NOTICE**

Section 44.034, Notification of Criminal History, Subsection (a), states “a person or a business entity that enters into a contract with a school district must give advance notice to the district if the person or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.”

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

This notice is not required of a publicly-held corporation

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

COMPANY NAME \_\_\_\_\_

AUTHORIZED COMPANY OFFICIAL’S NAME

(Printed) \_\_\_\_\_

A. My firm is publicly-held corporation; therefore, this reporting requirement is not applicable.

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

B. My firm is not owned or operated by anyone who has been convicted of a felony.

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

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

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

**CRIMINAL HISTORY CHECK REQUIREMENTS**

**Introduction:** Texas Education Code Chapter 22 requires school districts that contract with entities to provide services to obtain criminal history record information regarding covered employees of that entity. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

**Definitions:**

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

**Disqualifying criminal history:** Any conviction or other criminal history information designated by the District, or 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; or (c) an equivalent offense under federal law or the laws of another state.

On behalf of \_\_\_\_\_ ("Vendor"), I  
certify that [check one]:

None of the employees of vendor and any subcontractors are *covered employees*, as defined above. If this box is checked, I further certify that vendor has taken precautions or imposed conditions to ensure that the employees of vendor will not become *covered employees*. Vendor will maintain these precautions or conditions throughout the time the contracted services are provided.

**Or**

Some or all of the employees of vendor are *covered employees*. If this box is checked, I further certify that:

1. Vendor will provide sufficient information to District so that District can obtain all required criminal history record information regarding vendor's covered employees. None of the covered employees with disqualifying criminal history may work at the District.
2. If vendor receives information that a covered employee subsequently has a reported criminal history, vendor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.
3. If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, vendor agrees to discontinue using that covered employee to provide services at the District.

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

\_\_\_\_\_  
Company Name Printed Name of Company Representative

\_\_\_\_\_  
Signature Date

**NON-COLLUSIVE BIDDING CERTIFICATION**

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

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

Street Address: \_\_\_\_\_ City, State, Zip \_\_\_\_\_

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

Vendor Contact Signature: \_\_\_\_\_

Vendor Contact (Print Name): \_\_\_\_\_

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

Signature of Company Officer: \_\_\_\_\_

Company Officer Printed Name: \_\_\_\_\_

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

**LEGAL COMPLIANCE**

It is the proposing company’s duty and responsibility to have knowledge of and be responsible for the compliance with all applicable laws, rules and regulations as they apply to this procurement process and any subsequent award.

If awarded under this document, does the firm agree to comply, in all relevant respects, with all Federal, State, and Local laws, rules and regulations related to the performance of services or supply of goods to the District?

YES \_\_\_\_\_ NO \_\_\_\_\_

**Signature below certifies accuracy of answers to all sections on this page.**

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

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

\_\_\_\_\_  
Company Name and Address

\_\_\_\_\_  
Telephone Number

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

\_\_\_\_\_  
Date

**CONFLICT OF INTEREST QUESTIONNAIRE**

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor doing business with local governmental entity		<b>FORM CIQ</b>
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<b>OFFICE USE ONLY</b>  Date Received	
<p><b>1</b> Name of vendor who has a business relationship with local governmental entity.</p>		
<p><b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p><b>3</b> Name of local government officer about whom the information is being disclosed.</p> <p align="center">_____</p> <p align="center">Name of Officer</p>		
<p><b>4</b> Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p align="center">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p align="center"> <input type="checkbox"/> Yes      <input type="checkbox"/> No                 </p> <p align="center">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p align="center"> <input type="checkbox"/> Yes      <input type="checkbox"/> No                 </p>		
<p><b>5</b> Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p><b>6</b> <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p><b>7</b></p> <p align="center">                     _____                      Signature of vendor doing business with the governmental entity                 </p> <p align="right">                     _____                      Date                 </p>		

**NOTICE OF NO CONFLICT OF INTEREST**

The District requires this notification to document the vendor’s acknowledgement of requirements of Texas Government Code, Section 176 of the Texas Local Government Code for disclosure of Conflicts of Interest. Submission of this form is a certification that the vendor submitting this form is stating that no conflict exists, as detailed in Texas Local Government Code Section 176.006 (a).

*This form is in addition to any other reporting requirement required under Texas state law and does not supplant any additional reporting requirements.*

---

Authorized Signature Printed Name

---

Company Name and Address

---

Telephone Number Email Address

---

Date

- Officers of the Reagan County Independent School District are:
- Jed Hruska, President, Board of Trustees
  - Aaron Gunnels, Vice President, Board of Trustees
  - Rudy Barrera, Secretary, Board of Trustees
  - JJ Weatherby, Member, Board of Trustees
  - Billy Hodge, Member, Board of Trustees
  - Federico Acevedo, Member, Board of Trustees
  - Ruben Martinez, Member, Board of Trustees
  - Eric Hallmark, Superintendent of Schools

If you are required to file a conflict disclosure under Texas Local Government Code Chapter 176, send the completed form to Reagan County Independent School District, Attn: Eric Hallmark, 1111 East 12th Street, Big Lake, TX 76932, or via email to [eric.hallmark@rcisd.net](mailto:eric.hallmark@rcisd.net).



## TRUSTEE CAMPAIGN CONTRIBUTION DISCLOSURE FORM

A prospective vendor seeking to enter into a contract to provide services for the Reagan County Independent School District (“the District”) must file this form with the District. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective vendor must disclose whether they, a family member or a representative of the prospective vendor has made a campaign contribution to any current Board of Trustee member of the District during the two years prior to the date on which the vendor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the vendor signs the contract, if the aggregate total of contributions given by the prospective vendor, a family member or a representative of the prospective vendor, to the current Board of Trustee member of the District exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the District may cancel a solicitation or proposed award for a proposed contract, or a contract that is executed may be terminated if: 1) a prospective vendor, a family member of the prospective vendor, or a representative of the prospective vendor gives a campaign contribution or any other thing of value to any Board of Trustee member of the District during the pendency of the procurement process or 2) a prospective vendor fails to submit a fully completed CAMPAIGN CONTRIBUTION DISCLOSURE FORM.

THIS FORM MUST BE INCLUDED IN THE PROPOSAL RESPONSE TO THIS REQUEST FOR PROPOSALS FOR FINANCIAL ADVISOR SERVICES AND MUST BE FILED BY ANY PROSPECTIVE VENDOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective vendor, if the prospective vendor is a natural person; or (b) an owner of a prospective vendor.

“Pendency of the procurement process” means the time period commencing with the public notice of the REQUEST FOR PROPOSAL and ending with the award of the contract or the cancellation of the REQUEST FOR PROPOSAL.

“Prospective vendor” means a person or business that is subject to the competitive sealed proposal process set forth in the Purchasing Code or a person or business that is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

“Representative of a prospective vendor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective vendor, or an employee or agent of the prospective vendor acting on behalf of the prospective vendor.

Contribution(s) made by: \_\_\_\_\_

Relation to Prospective Vendor: \_\_\_\_\_

Date(s) Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s): \_\_\_\_\_

Nature of Contribution(s): \_\_\_\_\_

Purpose of Contribution(s): \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Date

**-OR-**

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER ONE HUNDRED DOLLARS (\$100) WERE MADE to any applicable Board of Trustees member of the District by me, a family member or representative of this prospective vendor.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Date

## FORM 1295

Effective January 1, 2016, a governmental entity may not enter into a contract requiring board approval, unless the business entity submits a Disclosure of Interested Parties (Form 1295) at the time the business entity submits the signed contract.

The following definitions apply:

1. "Interested Party" means a person:
  - a. Who has a controlling interest in a business entity with whom a governmental entity 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.
  
2. "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
  
3. "Business Entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. "Business entity" includes a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.
  
4. "Contract" includes an amended, extended, or renewed contract.
  
5. "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."

**A business entity must file Form 1295 electronically with the Texas Ethics Commission using the Commission's online filing application, which can be found at:**

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

The business entity must **print a copy** of the completed form, which will include a certification of filing containing a unique certification number. The Form 1295 must be **signed by an authorized agent** of the business entity, and **the form must be notarized**. The **business entity must then submit the completed, signed, notarized Form 1295 to the contracting school district**.

Again, interlocal contracts DO NOT REQUIRE a Form 1295 because governmental entities do not fall within the definition of "business entity". Notably, though, compliance with HB 1295 is required for contracts with nonprofit agencies, such as the Irving Independent School District.

## COMPLIANCE WITH STATE AND FEDERAL LAWS

### **Certification of Eligibility**

By submitting a statement of proposals, Respondent certifies that at the time of submission, it is not on the Federal Government's list of suspended, ineligible, or debarred entities. In the event of placement on the list between the time of bid submission and time of award, the Respondent will notify the District. Failure to do so may result in terminating the contract for default.

### **Certification Regarding Employment Assistance Prohibited**

Respondent certifies and agrees that it shall not assist an employee, contractor or agent of the District or of any other school district in obtaining a new job if the proposer knows or has probable cause to believe that the individual engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personal file does not violate this prohibition.

### **Verification Regarding No Discrimination of Firearm Entities or Trade Associations**

Pursuant to Texas Government Code, Chapter 2274, as enacted in SB19 by the 87<sup>th</sup> Legislature, if Respondent is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit, which has ten (10) or more full-time employees and the value of the contract with District is \$100,000 or more, the Respondent represents and warrants to the District that the Respondent does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association<sup>2</sup> and will not discriminate against a firearm entity or firearm trade association during the term of any contract resulting from the solicitation.

### **Verification Relating to State Contracts with and Investments in Companies that Boycott Energy Companies**

Pursuant to Texas Government Code, 2274, as enacted in SB13 by the 87<sup>th</sup> Legislature, if Respondent is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit, which has ten (10) or more full-time employees and the value of the contract with District is \$100,000 or more, the Respondent represents and warrants to the District that the Respondent does not boycott energy companies<sup>3</sup> and will not boycott energy companies during the term of any contract resulting from the solicitation.

### **Relating to State Contracts with and Investments in Companies that Boycott Israel**

Pursuant to Texas Government Code, Chapter 2271, as amended, if Respondent is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with District is \$100,000 or more, the Respondent represents and warrants to the District that the Respondent does not boycott<sup>4</sup> Israel and will not boycott Israel during the term of any contract resulting from the solicitation.

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<sup>2</sup> A "firearm entity" means a firearm, firearm accessory, or ammunition manufacture, distribute, wholesaler, supplier or retailer, or a sport shooting range. A "firearm trade association" means any person, corporation, unincorporated association, federation, business league or business organization that is not organized or operated for profit for which none of its net earning inures to the benefit of any private shareholder or an individual that has two or more firearm entities as members, or is exempt for federal income taxation under Section 501(c) of the Internal Revenue Code.

<sup>3</sup> "Boycott energy companies" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations with a company because the company engages in the exploration, production utilization, transportation, sale or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law.

<sup>4</sup> "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**Relating to State Contracts with and Investment in Companies that do Business with Iran, Sudan, or any known foreign terrorist organizations** Effective September 1, 2017, Respondent verifies that it/he/she does not do business with Iran, Sudan, or any known foreign terrorist organizations and will not do business with Iran, Sudan, or any known foreign terrorist organizations during the term of this contract. The term “foreign terrorist organization” is defined by Texas Government Code Section 806.001, effective September 1, 2017.

**Relating to No Contracts with an Abortion Provider**

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

**Certification of Compliance with Texas Family Code**

As per Section 14.52 of the Texas Family Code, added by S.B. 84, Acts, 73rd Legislature, R.S. (1993), all respondent certifies as follows:

I, the undersigned vendor, do hereby acknowledge that NO sole proprietor, partner, majority shareholder of a corporation or an owner of 10% or more of another business entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement. I understand that under this provision, a sole proprietorship, partnership, corporation or other entity in which a sole proprietor, partner, majority shareholder or a corporation or other entity in which a sole proprietor, partner, majority shareholder or a corporation or an owner of 10% or more of another entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement is NOT eligible to bid or receive a state contract.

---

Respondent Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

**HISTORICALLY UNDERUTILIZED BUSINESS INFORMATION QUESTIONNAIRE**

A bidder/proposer that has been certified as a Minority/Women Business Enterprise (also known as “Historically Underutilized Business” or “HUB” and all referred to in this form as “MWBE”) is encouraged to indicate its MWBE certification status when responding to this Bid/Proposal Invitation.

- I certify that my company has been certified as a MWBE in the following categories (Please check all that apply)
  - Minority Owned Business
  - Women Owned Business

Certificate Number: \_\_\_\_\_

Name of Certifying Agency: \_\_\_\_\_

- My company has **NOT** been certified as MWBE

By signature below, I certify that the above is true, complete and accurate and that I am authorized by my company to make this certification.

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

Signature: \_\_\_\_\_

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

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

**PROPOSAL FORM**  
**for**  
**Program Manager for 2023-24 Bond Projects**  
**RFP 2023-003**

**REAGAN COUNTY INDEPENDENT SCHOOL DISTRICT**

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

Date: \_\_\_\_\_

To: **Reagan County Independent School District**  
**Attn: Eric Hallmark, Superintendent**  
**1111 E. Twelfth Street**  
**Big Lake, TX 76932**

Having examined proposal documents prepared by Reagan County Independent School District, RFP No. 2023-003, the undersigned proposes to perform all work as the Program Manager for the 2023-24 Bond Projects and the undersigned proposes to furnish all labor, supplies, equipment and materials to provide such Program Manager services.

**PROPOSED FEE:**

**Please indicate your proposed fee for the 2023-24 Bond Projects.** It is anticipated that the District will enter into a contract with a stipulated sum with the Program Manager.

Program Manager fee for services, not to exceed \$ \_\_\_\_\_, including all mark up and profit (based on estimated Construction Budget of \$68,800,000)

**Other Costs (if any specify below):**

- |          |          |
|----------|----------|
| 1. _____ | \$ _____ |
| 2. _____ | \$ _____ |
| 3. _____ | \$ _____ |

**TOTAL COST TO DISTRICT** \$ \_\_\_\_\_  
(from all costs above)

**SAMPLE AIA C171-2013, AS AMENDED BY THE DISTRICT**



 **AIA**® Document C171™ – 2013

**Standard Form of Agreement Between Owner and Program Manager** for use in a Multiple Project Program

**AGREEMENT** made as of the  day of  in the year two thousand twenty-three  
(In words, indicate day, month and year.)

**BETWEEN** the Program Manager’s client identified as the Owner:  
(Name, legal status, address and other information)

Reagan County Independent School District (hereafter "District" or "Owner")  
1111 E. Twelfth St.  
Big Lake, TX 76932  
Telephone: (325)884-3705

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

for the following Program:  
(Name, location, and detailed description of the group of buildings and/or site improvement projects included in the Program)

Reagan County ISD 2023-24 Bond Projects  
Big Lake, Texas

The Owner and Program Manager agree as follows.

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

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### ARTICLE 1 PROGRAM INFORMATION AND INITIAL INFORMATION

§ 1.1 This Agreement is based on the Program Information and Initial Information set forth in Sections 1.2 and 1.3.

#### § 1.2 Program Information

*(Insert the requested Program Information below. For information that is not provided, insert a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

##### § 1.2.1 Preliminary description of the projects comprising the Program:

*(Identify proposed use, size, or other known information for each project in the Program.)*

Campus Improvements, may include, but not limited to the following:

- Middle School renovations
- New CTE Facility
- New Competition Gym
- Parking lots

##### § 1.2.2 Location of each project in the Program:

##### § 1.2.3 Preliminary assessment of the condition of existing facilities or sites, if any:

*(Identify or describe written reports of the conditions of existing facilities or sites.)*

##### § 1.2.4 Funding source:

*(Identify anticipated funding sources, and deadlines or schedules related to funding, as well as whether funding is authorized.)*

#### School District General Obligation Bonds

##### § 1.2.5 The Owner's budget for the Program, including the budgets for each project in the Program:

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User Notes:

(2050384998)

(Provide the Owner's total budget for the Program and, if known, a line-item breakdown of all costs described in Section 3.4.1.)

Approximately Sixty Million (\$68,800,000) Dollars

**§ 1.2.6** The Owner's intended procurement or delivery methods for design and construction of the projects in the Program.

(Identify method such as competitive bid, negotiated contract, multiple prime contracts or construction management.)

Construction Manager-Agent, with multiple contracts by competitive sealed proposals

**§ 1.2.7** Anticipated scheduling information:

(Include overall Program duration and milestones. If known, include proposed dates for commencement and completion of design, commencement and completion of construction, occupancy, and any other critical scheduling information for each project in the Program.)

.1 Anticipated dates of Program commencement and completion:

.1 Commencement of design, if other than the date of this Agreement:

■

.2 Completion of design:

To be determined.

.3 Commencement of construction

To be determined.

.4 Completion of construction

To be determined.

.2 Other Program scheduling information:

To be determined.

**§ 1.2.8** Other information regarding the Program:

(Identify any other available studies or reports, as well as special characteristics or needs of the Program, such as environmentally responsible design or historic preservation requirements, not provided elsewhere.)

**§ 1.3 Initial Information**

(Insert the requested Initial Information below. For information that is not to be provided, insert a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

**§ 1.3.1** The Owner will retain the following consultants and contractors:

(List name, discipline, address and other information. If the Owner will retain a consultant or contractor for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

Unknown at this time.

**§ 1.3.2** The Program Manager will retain the consultants identified in Sections 1.3.2.1 and 1.3.2.2:

**§ 1.3.2.1** Consultants retained under Basic Services:

*(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)*

Unknow at this time.

**§ 1.3.2.2** Consultants retained under Additional Services:

*(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)*

Unknow at this time.

**§ 1.3.3** The Owner identifies the following representative in accordance with Section 5.4:

*(List name, address and other information.)*

Eric Hallmark, Superintendent, or his successor  
Reagan County Independent School District  
1111 E. Twelfth St.  
Big Lake, TX 76932  
Telephone: (325)884-3705  
Email: eric.hallmark@rcisd.net

**§ 1.3.4** The persons or entities, in addition to the Owner's representative, who are required to review and approve the Program Manager's submittals to the Owner are as follows:

*(List name, address and other information.)*

Jonathan Schmutz, AIA  
CADCO Architects-Engineers, Inc.  
2401 S. Willis, Suite 200  
Abilene, TX 79605  
Telephone: 325-695-6281  
Email: j.schmutz@cadcoae.com

**§ 1.3.5** The Program Manager identifies the following representative in accordance with Section 2.4:

*(List name, address and other information.)*

**§ 1.3.6** Other Initial Information on which the Agreement is based:

**§ 1.4** The Owner and Program Manager may rely on the Program Information and Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Program Manager shall agree in writing to appropriately adjust the schedules, the Program Manager's services and the Program Manager's compensation.

**ARTICLE 2 PROGRAM MANAGER'S RESPONSIBILITIES**

**§ 2.1** The Program Manager shall provide the services as set forth in this Agreement. To the extent of a conflict between the terms of this Agreement and any related Contract Documents, the terms specifying the greater quality, greater quantity, and higher standard shall control.

§ 2.2 The Program Manager shall perform its services consistent with the skill and care ordinarily provided by ~~program managers~~ a competent program manager practicing in the same or similar locality under the same or similar circumstances. The Program Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Program.

§ 2.3 The Program Manager, as soon as practicable after execution of the Agreement, shall confirm in writing to the Owner the names and qualifications of its proposed key staff members. ~~Within 14 days of receipt of the names and qualifications of the Program Manager's proposed key staff members, the Owner may reply to the Program Manager in writing stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.~~ The Program Manager shall not staff any employees on the Program to whom the Owner has made reasonable and timely objection. The Program Manager shall not change its key staff members without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 2.4 The Program Manager shall identify a representative authorized to act on behalf of the Program Manager with respect to the Program.

§ 2.5 Except with the Owner's knowledge and consent, the Program Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Program Manager's judgment with respect to the Program. Consistent with Program Manager's professional ethics, Program Manager shall represent the Owner in a fiduciary capacity and defend the Owner's interests.

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

§ 2.7 The Program Manager shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Program Manager normally maintains, the Owner shall reimburse the Program Manager for any additional cost as set forth in Section 10.6.3.

§ 2.7.1 Comprehensive General Liability with policy limits of not less than ~~(\$ )~~ one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on the Program Manager's Comprehensive General Liability policy.

§ 2.7.2 Automobile Liability covering owned and rented vehicles operated by the Program Manager with policy limits of not less than ~~(\$ )~~ one million dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on the Program Manager's Automobile Liability policy.

§ 2.7.3 The Program Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. The Owner shall be named as an additional insured on the Program Manager's umbrella or excess insurance policy.

§ 2.7.4 Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than ~~(\$ )~~ and Employers' Liability at statutory limits, pursuant to Texas Labor Code Section 406.096, and as set forth in Exhibit "A."

§ 2.7.5 Professional Liability covering the Program Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than ~~(\$ )~~ per claim and one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

§ 2.7.6 The Program Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Comprehensive

General Liability, Automobile Liability, and umbrella or excess policies, and have separate line item for errors and omissions for two million dollars (\$2,000,000) per project, in the aggregate.

§ 2.7.7 The Program Manager shall require its consultants to provide insurance in the amounts listed in Article 2.

§ 2.7.8 The required insurance must be written by a company authorized to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner.

§ 2.7.9 Insurance provided pursuant to this Article shall be considered a part of Program Manager's Basic Services and shall not be a Reimbursable Expense under this Agreement.

### **ARTICLE 3 SCOPE OF PROGRAM MANAGER'S BASIC SERVICES**

#### **§ 3.1 General**

§ 3.1.1 The Program Manager's Basic Services consist of those described in this Article 3. The Program Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Program Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs employed in connection with the construction of the projects in the Program, nor shall the Program Manager be responsible for the failure of the Owner's consultants or contractors to perform services for, or the construction of, a project in accordance with the plans, specification or other contract or legal requirements, unless Program Manager knew of such failure and did not inform Owner as set in §3.7.15. The Program Manager shall be responsible for the Program Manager'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 Owner's consultants or contractors.

§ 3.1.2 The Program Manager shall periodically review the development of the design for each project in the Program and provide recommendations for systems, materials, equipment and techniques that are utilized to achieve the Design Standards established pursuant to Section 3.3.4. The Program Manager shall provide advice on construction feasibility, availability of materials and labor, and procurement and time requirements for installation and construction.

§ 3.1.3 The Program Manager shall determine the need for retaining consultants to provide professional and other services for each project in the Program, and assist the Owner in reviewing qualifications and selecting any such consultants.

§ 3.1.4 The Program Manager shall assist the Owner in procuring and selecting the services of independent testing laboratories, review their reports and make recommendations to the Owner.

§ 3.1.5 The Program Manager shall assist the Owner in assessing an appropriate construction delivery method and reviewing the qualifications of, and in selecting and retaining contractors for each project in the Program.

§ 3.1.6 The Program Manager shall assist the Owner in establishing building information modeling and digital data protocols for the projects in the Program as appropriate.

§ 3.1.7 The Program Manager will provide on-site project inspections and observations, as necessary, and work with the Owner's Superintendent of Schools or his designee, as needed, during project construction.

§ 3.1.8 The Program Manager shall, as directed by Owner, make presentations and answer questions from Program stakeholders. Program Manager shall design, establish and provide necessary information for Owner to maintain a Program website regarding the Program and project specific progress/status.

§ 3.1.9 The Program Manager shall put in place a system of daily and weekly updates and reporting to the Owner's Representative to keep the Owner informed of the status of each project in the Program and issues requiring attention.

#### **§ 3.2 Program Management Plan**

§ 3.2.1 In order to ascertain the requirements of the Program, the Program Manager shall review and discuss with the Owner the Program Information and Initial Information, along with any other information listed below to be furnished by the Owner. The Program Manager and the Owner shall discuss the feasibility of incorporating sustainable objectives in the Program.



*(List other information to be furnished by the Owner.)*

§ 3.2.2 The Program Manager shall develop and document a Program Management Plan with input from the Owner reflecting the scope and related requirements for each project of the Program and submit the Program Management Plan to the Owner for approval. The Program Management Plan shall include a description of, and requirements pertaining to, the following:

- .1 Program management approach and organization, including executive, management and team staffing plan and responsibilities;
- .2 Program planning and development activities, including strategic planning, prioritizing, and defining scope, schedule and budget of the projects in the Program;
- .3 Program management controls, including scope, budget/cost, schedule, and quality management plan;
- .4 Procurement strategies and procedures, including strategy for procurement of design services and construction; procedures for pre-purchase of material, systems, and equipment; evaluating and approving substitutions; and affirmative action or diversity plan;
- .5 Authorization processes and procedures, including administrative approval processes and responsibilities, and key documentation for: professional services and preconstruction services; processes and procedures for project construction procurement, such as award, contracting, notice to proceed, change orders, payment certification; and project closeout;
- .6 Program communication procedures, including systems, meetings, reporting, investigation, and records;
- .7 Development of design process guidelines, including assessment, prioritization, project scope definition, design development, coordination, and permit process;
- .8 Development of construction process guidelines, including preconstruction and construction administration services, construction phase processes and procedures, program coordination, change order management, commissioning, and project closeout procedures; and
- .9 Project acceptance and turnover guidelines relating to contract completion and closeout management, including record documentation, manuals and warranties.

§ 3.2.3 The Program Manager shall obtain the Owner's approval of the Program Management Plan, and any subsequent revisions to the Program Management Plan. The Program Manager shall meet with the Owner to discuss the Program Management Plan and any necessary revisions-revisions, as needed, but not less than every six months, or at intervals set forth below:

*(Insert the milestones or intervals for Program Management Plan updates, if other than every six months.)*

### § 3.3 Information Management and Standards

§ 3.3.1 **Program Management Information System.** The Program Manager shall implement and, for the duration of the Program, maintain and upgrade as necessary a web-based Program Management Information System to be used to receive, distribute, and maintain Program Reports, Program Schedules, and other information, reports and documentation as agreed by the Owner and the Program Manager. Activities under the Program will be scheduled and documented through the Program Management Information System. The Program Management Information System shall organize information by project, activity, or relevant categories, as determined by the Program Manager and Owner. The Program Manager shall collect information pertaining to the Program, and update the Program Management Information System on a weekly basis unless otherwise agreed. The Program Management Information System shall contain, at a minimum, current status on contracts, budget, schedule and quality on a Program and project basis.

§ 3.3.2 The Owner shall have access to all information in the Program Management Information System. Other Program and project participants shall have access to specific information only as approved by the Owner. Upon the completion of each project in the Program, the Program Manager shall preserve the documentation and information contained in the Program Management Information System and provide a copy to the Owner.

§ 3.3.3 The Program Manager shall develop protocols and standards for the exchange and use of information in digital form to be integrated into the Program Management Information System. The Program Manager shall provide information to the Owner and the Owner's consultants and contractors, as required for the duration of the Program,

regarding the use of the Program Management Information System.

**§ 3.3.4 Design Standards.** The Program Manager shall assist the Owner, and Owner's Design Manager, if any, in developing and periodically updating Design Standards for the Owner's approval. The Design Standards shall provide a functional, aesthetic, and quality framework for the projects in the Program and shall include the following: planning criteria (including area, volume, equipment, finish, technical services and other relevant functional requirements for typical spaces); specifications and performance requirements (including sustainable design criteria) for materials, systems, components and assemblies organized by classification system as agreed upon with the Owner; drawing, building information modeling, and documentation standards (including requirements for interim and final contract document deliverables); typical design details of selected conditions; and, procurement, contracting and general requirements. The Design Standards shall incorporate any existing Owner design standards.

**§ 3.3.5** Prior to the start of the design of each project, the Program Manager shall make the Owner-approved Design Standards available to the Owner's design consultants through the Program Management Information System.

**§ 3.3.6 Program Report.** On a ~~monthly~~ bi-weekly basis, or as set forth below, the Program Manager shall prepare a Program Report. The Program Report shall include a summary update of Program and project status, an updated Program Schedule, actual and anticipated costs related to the Program, cost and payment reports for each consultant and construction contract, cash flow projections, proposed and approved ~~change orders~~, Change Orders, and any claims pertaining to the Program Manager, Owner, and the Owner's other consultants and contractors.  
*(If the Program Report is required at intervals other than monthly, set forth such intervals below.)*

#### **§ 3.4 Program Budget Control**

**§ 3.4.1** If the Owner has not established a Program Budget, the Program Manager and the Owner shall collaborate to prepare a preliminary Program Budget, which shall include the costs for the Program Manager's services, the costs of the services of the Owner's other consultants, the costs for design and construction of each project in the Program, and additional details necessary for the Owner to prepare a complete Program Budget. The Owner shall review and approve in writing the preliminary Program Budget. The Program Manager shall provide monthly reports on the Program Budget, or at intervals otherwise agreed to by the Owner and Program Manager below. The Program Manager shall organize the Program Budget in a manner that will allow costs to be tracked using the Program Management Information System.

*(If the Program Manager is required to provide Program Budget reports at intervals other than monthly, set forth such intervals below.)*

**§ 3.4.2** The Program Manager shall develop and implement a system of budget and cost controls to assist the Owner in the management of Program and project costs. The Program Manager shall prepare cash flow projections of costs for the Program.

**§ 3.4.3** The Program Manager shall review estimates prepared by the Owner's consultants and contractors and produce a report identifying variances from the Program Budget along with recommendations for resolving such variances.

**§ 3.4.4** The Program Manager shall share information regarding the Program Budget with the Owner's consultants as authorized by the Owner.

**§ 3.4.5** The Program Manager shall assist in identifying Program-wide procurement and cost saving opportunities.

**§ 3.4.6** The Program Manager shall report the cost impact on the Program Budget of proposed contracts, ~~change orders~~, Change Orders, and proposed contract amendments from the Owner and the Owner's consultants and contractors.

**§ 3.4.7** The Program Manager will review, analyze, and make recommendations regarding cost, schedule and quality impacts of all Change Orders submitted by the design team or by Contractors for consideration by Owner or Owner's Representative. The Program Manager will analyze and negotiate both the scope and cost of all Change Orders for



Owner's approval on at least a monthly basis, and report to Owner's Representative the impact of all Change Orders on each project's cost (including impact on fees for all of Owner's Construction Manager, Architect and other consultants, if any), budget, schedule and quality.

### **§ 3.5 Program Schedule Control**

**§ 3.5.1** The Program Manager shall prepare a Program Schedule showing priorities, sequences, durations, and responsible parties for major design, pricing, construction and Owner activities; establishing the overall duration of the Program; and identifying critical milestone dates. The Program Manager shall update and expand the level of detail and status of the Program Schedule as the Program progresses. The Program Schedule shall also incorporate or identify

- .1 dates for approvals and ~~permits~~; permits for each project;
- .2 project specific milestones and design and construction schedules, including dates of commencement and completion;
- .3 components that need to be ordered or procured for the overall Program or for specific projects by the Owner, if any; and
- .4 the Owner's occupancy requirements and any portions of the Program having occupancy priority.

**§ 3.5.2** The Program Manager shall provide recommendations for project sequencing and phasing to meet overall Program objectives.

**§ 3.5.3** The Program Manager shall provide recommendations on the milestone dates and durations in the design and construction schedules as they are developed for the projects in the Program.

**§ 3.5.4** The Program Manager shall monitor and report on the progress of the Program and indicate to the Owner observed deviations from the Program Schedule and budget or key milestones of the individual project schedules that may impact substantial completion or final completion. The Program Manager shall include the reports in the Program Management Information System. The Program Manager shall consult with the Owner and the Owner's consultants and contractors to develop recovery plans when the ~~schedules~~ schedules, budgets or objectives are not being met.

### **§ 3.6 Program Quality Control**

**§ 3.6.1** The Program Manager shall establish, and distribute through the Program Management Information System, quality control guidelines that define the obligations of the Program Manager, Owner, and the Owner's consultants and contractors.

**§ 3.6.2** The Program Manager shall periodically review the development of the design for each project in the Program for conformance with the Program requirements and Design Standards. The Program Manager shall provide a list of observed deviations from the Design Standards and discuss resolution of the observed deviations with the Owner and, as appropriate, the Owner's consultants and contractors.

**§ 3.6.3** The Program Manager shall confirm that each contractor has prepared a safety program and project specific quality control plan.

**§ 3.6.4** The Program Manager shall advise the Owner of observations it makes regarding deficiencies in the performance of the Owner's consultants and contractors.

### **§ 3.7 Other Services**

**§ 3.7.1** ~~Subject to Sections 4.1.1 and 4.3.1.3, upon the Owner's written request, the~~ The Program Manager shall provide reasonable assistance in the areas of community and public relations, in order to enhance and maintain public awareness in furtherance of the interests of the Program and the Owner.

**§ 3.7.2** The Program Manager shall schedule and conduct meetings with the necessary Program participants to coordinate the progress of the Program. The Program Manager shall also prepare minutes of such meetings and include them, as appropriate, in the Program Management Information System. The Program Manager shall also prepare and distribute meeting notes and ensure coordination of issues raised during the meeting with all responsible stakeholders for each project. This will include weekly progress meetings which the Program Manager will chair. Meeting notes will be issued to all parties involved in the meetings no later than three (3) working days following the date of the meeting.

§ 3.7.3 The Program Manager shall develop a strategy, procedure, and schedule to assist the Owner in obtaining the required reviews and approvals of authorities having jurisdiction over each project in the Program.

§ 3.7.4 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of changes or proposed changes in the scope of design or construction for projects in the Program, and the corresponding contracts for design and construction.

§ 3.7.5 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of applications for payment for the Program and the projects in the Program.

§ 3.7.6 ~~The Program Manager shall assist the Owner in selecting the dispute resolution procedures to be included in the various agreements between the Owner or the Program Manager and consultants and contractors for disputes arising out of the Program. If the Program Manager reasonably believes the Architect should reject Work or require additional inspection or testing of the Work, the Program Manager shall promptly recommend such actions to the Owner and Architect in writing. The Program Manager shall also recommend to the Owner, in writing, courses of action when requirements of a contract are not being fulfilled. The Program Manager shall include all recommendations required by this Section in its Project Reports.~~

§ 3.7.7 ~~Upon the written request of the Owner, the Program Manager shall evaluate and provide input to the Owner on claims arising out of the Program. The Program Manager shall review the Contractor's Applications for Payment for each project and provide written recommendations, if any, to the Owner and Architect.~~

§ 3.7.8 ~~The Program Manager shall assist the Owner in establishing a procedure for tracking and submission of records, warranties, guarantees, and documents pertaining to systems verification and project close-out, for projects in the Program. When requested by the Owner, the Program Manager shall review requests for changes, assist the Owner and Architect in evaluating and negotiating Contractors' proposals, and submit written recommendations to the Owner. Upon request by the Owner, the Program Manager will review Change Orders and Construction Change Directives prepared by the Architect and provide written comments regarding any questions or concerns the Program Manager has regarding the Change Orders or Construction Change Directives.~~

§ 3.7.9 ~~The Program Manager shall evaluate whether the Work for each project in the Program, or a designated portion thereof, is substantially complete and provide its written recommendations to the Owner and Architect. Upon the Contractor's completion of the Work, the Program Manager shall inspect the Work and provide written recommendations to the Owner and Architect.~~

§ 3.7.10 ~~Upon the written request of the Owner, the Program Manager shall evaluate and provide input to the Owner on claims arising out of the Program.~~

§ 3.7.11 ~~The Program Manager shall assist the Owner in establishing a procedure for tracking and submission of records, warranties, guarantees, and documents pertaining to systems verification and project close-out, for projects in the Program. The Program Manager shall coordinate delivery to the Owner of all keys, manuals and record drawings it receives from the various project Contractors.~~

§ 3.7.12 ~~The Program Manager shall review each Contractor's final Application for Payment for each project in the Program and provide written recommendations, if any, to the Owner and Architect.~~

§ 3.7.13 ~~Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion for each project in the Program, the Program Manager shall, without additional compensation, attend a meeting with the Owner and Architect to review the facility operations and performance of each project.~~

§ 3.7.14 ~~The Program Manager shall assist the Owner with FF&E procurement coordination.~~

§ 3.7.15 ~~The Program Manager shall determine, in general, the Work for each Contractor is performed in accordance with the requirements of the Contract Documents, and endeavor to guard the Owner against defects and deficiencies in the Work. The Program Manager shall notify the Architect and the Owner of any Work that does not conform to the Contract Documents. The Program Manager shall be responsible for providing to Owner, at no additional cost, Additional Services made necessary by major defects or deficiencies in Contractor's Work, of which the Program Manager knew or should have discovered through reasonable care.~~

### **§ 3.8 Project Phase Services**

As part of Basic Services, the Program Manager shall provide the following for each Phase of the Program:

#### **§ 3.8.1 Project Administration:**

- .1 Lead communication between construction and design professionals and Owner's project representatives
- .2 Document meetings that include Owner involvement in the Program Management Information System
- .3 Maintain comprehensive project directory
- .4 Facilitate and lead coordination of meetings between all team members and Owner
- .5 Lead design review and approvals at each phase
- .6 Lead budget review and approval at each phase
- .7 Lead schedule review and approval at each phase and schedule recovery, as needed
- .8 Lead and document regularly scheduled progress meetings for each project
- .9 Document and submit monthly status reports, including budget, schedule cash flow and major issue, resolution needs for each project
- .10 Prepare and distribute all necessary "Deliverables" as required in the course of providing Program Management services, including, but not limited to, schedules, budgets, reports, or meeting minutes
- .11 Prepare and present status reports to the Superintendent of Schools and Board of Trustees, as requested

#### **§ 3.8.2 Project Budget Control:**

- .1 Develop, monitor, and maintain Program budgets for each project
- .2 Lead budget resolution
- .3 Develop, monitor, and maintain Cash Flow Analysis
- .4 Review and process all project invoices and Applications for Payment in timely and accurate manner
- .5 Review all change requests and Change Orders to ensure compliance with Contract Documents

#### **§ 3.8.3 Project Schedule Control:**

- .1 Develop, monitor, and maintain project schedules
- .2 Lead Schedule resolution
- .3 Maintain Bond Program schedule
- .4 Lead design team schedule development for each project
- .5 Lead construction schedule development for each project
- .6 Evaluate schedule for project milestones and potential gaps and lead times

#### **§ 3.8.4 Project Professional Services:**

- .1 Coordinate engineer and consultant qualification and selection process with Owner, as needed
- .2 Develop detailed RFQ and RFP process for consultants for each project as required by Owner
- .3 Develop selection matrix to evaluate qualifications for consultants for each project
- .4 Communicate market conditions that affect a qualified firm's resources to perform and their fees
- .5 Coordinate possible interview of short-listed consultant firms by Owner
- .6 Manage notification process for short-listed and eliminated firms
- .7 Assist Owner with negotiation of all professional services
- .8 Assist in development of agreement between Owner and consultants
- .9 Manage design process throughout course of design phase
- .10 Lead architectural and engineering design review and value engineering opportunities

#### **§ 3.8.5 Project Pre-Construction Services:**

- .1 Coordinate contractor qualification and selection process by Owner, as needed
- .2 Develop with Owner's approval detailed RFP process for contractors and service providers
- .3 Pre-qualification of interested construction service providers
- .4 Evaluate proposals, including schedule, budget and qualifications
- .5 Coordinate interview of short-listed firms, if requested by Owner
- .6 Communicate market conditions affecting qualified firm's resources
- .7 Assist in negotiation of all construction services as requested by Owner
- .8 Assist in development of agreement between Owner and contractors

- .9 Lead pre-construction efforts to ensure conformance with budget and goals for each project
- .10 Lead the process for securing permitting for construction

**§ 3.8.6 Project Construction Services:**

- .1 Lead construction team throughout construction process
- .2 Monitor construction activities, documenting key construction elements
- .3 Lead project construction reviews
- .4 Lead construction Change Order reviews and document all Change Orders
- .5 Lead construction schedule changes review and document all schedule changes
- .6 Lead commissioning implementation review
- .7 Develop detailed project close-out list
- .8 Monitor facility performance during 12-month warranty period
- .9 Develop warranty log, monitor and confirm correction construction
- .10 Facilitate and document final month 12 warranty walk-through to close out projects

**§ 3.8.7 Project Activation and Move-In Services:**

- .1 Coordinate move-in activities to full operations, including documenting key activation elements and schedule
- .2 Coordinate move-in systems reviews, including furniture, equipment, artwork, and fixtures
- .3 Coordinate activation and move-in schedule development, monitoring, and reporting.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Program. The Program Manager shall provide the listed Additional Services only if specifically designated in the table below as the Program Manager’s responsibility, and the Owner shall compensate the Program Manager as provided in Section 10.3.

*(Designate the Additional Services the Program Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit. AIA Contract Document numbers are cited, where applicable, to provide a basis for the proposed scope of services, but may need to be revised to be applicable in the Program Management context.)*

<b>Services</b>	<b>Responsibility</b> <i>(Program Manager, Owner or not provided)</i>	<b>Location of Service Description</b> <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Deleted – Part of Basic Services		
<del>§ 4.1.1 Community communications not included in Section 3.7.1</del>		
§ 4.1.2 Capital campaign support		
§ 4.1.3 Project Specific Construction Management (C132™-2009)		
§ 4.1.4 Assistance with sustainability certifications		
§ 4.1.5 Affirmative action/diversity compliance and outreach		
§ 4.1.6 Design Management Services (B171™-2013)		
§ 4.1.7 Existing facilities analysis		
§ 4.1.8 Site Selection Analysis (B203™-2007)		
§ 4.1.9 Economic analysis		
§ 4.1.10 Project Programming (B202™-2009)		
§ 4.1.11 Master planning		
§ 4.1.12 Deleted – Part of Basic Services		
<del>§ 4.1.12 Early procurement of materials and equipment</del>		
§ 4.1.13 Deleted – Part of Basic Services		
<del>§ 4.1.13 FF&amp;E procurement coordination</del>		
§ 4.1.14 Detailed cost estimating		

§ 4.1.15	Life cycle analysis		
§ 4.1.16	Move management		
§ 4.1.17	Coordination of hazardous material testing or abatement		
§ 4.1.18	Other project specific services:		
§ 4.1.19	Other Program specific services:		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Program Manager's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Program Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Program Manager to compensation pursuant to Section 10.4.

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

- .1 Services necessitated by a change in the Program Information or Initial Information; a change to previous instructions or approvals given by the Owner; or a material change in the Program or projects in the Program including, but not limited to, size, quality, complexity, the Owner's Program Schedule or Program Budget, or procurement or delivery methods in addition to those listed in Section 1.2.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .3 Preparation for, and attendance at, public presentations, meetings or hearings in excess of (—) ten (10) total hours;
- .4 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Program Manager is party thereto;
- .5 Services required to assist in the repair or replacement of any elements of construction on projects in the Program, for any cause except the negligence of the Program Manager; or
- .6 Services required by deficiencies in the performance or default of Owner's consultants or contractors.

§ 4.3.2 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Program Manager, an extension of Owner may choose to extend the Program Manager's services beyond that time-time, and Program Manager shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall provide and update information regarding requirements for, and limitations on, the Program in a timely manner, including the information in Article 1; other objectives, schedule constraints and criteria, and site requirements; and any other information either described in Article 5 or required for the Program Manager to perform its services.

§ 5.2 The Owner shall collaborate with the Program Manager to establish and periodically update the Program Budget including (1) the Program Manager's costs, (2) design and constructions costs, (3) the Owner's other costs, and (4) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Program Budget, the Owner shall promptly notify the Program Manager, and in consultation with Program Manager and the Owner's other consultants and contractors, agree to corresponding changes in project scopes, features or quality.

§ 5.3 The Owner shall retain all contractors and consultants necessary to carry out the Program except for those consultants retained by the Program Manager as listed in Section 1.3.2. The Owner shall provide the Program Manager with a copy of all executed agreements between the Owner and its consultants and contractors, and any modifications to those agreements. ~~The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided, and require that its contractors maintain~~



commercial general liability insurance and other liability insurance as appropriate to the services or work provided. The Owner shall require all contractors to name the Program Manager and its consultants as Additional Insureds on all insurance policies where available.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Program. The Owner shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Program Manager's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the sites included within the Program, and written legal descriptions of those sites. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; 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 the information on the survey shall be referenced to an appropriate benchmark at each project location.

§ 5.6 ~~The Owner shall furnish services of geotechnical engineers.~~ Geotechnical engineering services shall be provided by or on behalf of Owner, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall ~~furnish~~ provide or contract for tests, inspections and reports required by law or the Program, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance, financing, and accounting services, including auditing services, that ~~may be reasonably necessary at any time it deems reasonably necessary~~ for the Program to meet the Owner's needs and interests.

§ 5.9 The Owner shall ~~provide, and shall require that its consultants and contractors provide, prompt written notice to the Program Manager if they become aware of~~ provide to Program Manager copies of any written notices Owner receives from its consultants and contractors regarding any fault or defect in the Program, including errors, omissions or inconsistencies in any documents produced by, or services provided by, the Program Manager.

§ 5.10 In the agreements between the Owner and the Owner's consultants or contractors, the Owner shall include a duty that the consultant or contractor cooperate with the Program Manager and provide information and documents reasonably necessary for the Program Manager to prepare and update the Program Management Plan or as otherwise required for the Program Manager to perform its services.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Program Manager's consultants through the Program Manager about matters arising out of or relating to the Program. The Owner shall communicate with its own forces, consultants, and contractors, and coordinate its own internal information and communications that are necessary for the Program. The Owner shall notify the Program Manager of any such communication that affects the Program. The Owner shall promptly notify the Program Manager of any direct communications that may affect the Program Manager's services.

§ 5.12 The Owner shall provide the Program Manager access to the project sites and other facilities under the Owner's control and associated with the Program. The Owner shall obligate its contractors to provide the Program Manager access to the project sites wherever work is in preparation or progress.

§ 5.13 For each project in the Program, the Owner shall purchase and maintain or require its contractors to purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles. These policies shall cover reasonable compensation for Program Manager's services and expenses required as a result of such insured loss.

## ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 The Program Manager assigns to the Owner its rights, including copyright, in its Instruments of Service. The Program Manager shall obtain a similar assignment to the Owner from the Program Manager's ~~consultants~~ consultants, if any, consistent with this Agreement. For purposes of this Agreement, Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Program Manager, the Owner, and their consultants and contractors under their respective services agreements. Instruments of Service may include, without limitation studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 6.2 The Program Manager and Owner warrant that in transmitting any information, including Instruments of Service, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the project.

§ 6.3 The Owner shall have exclusive ownership of all data in the Program Management Information System and the Program Management Plan developed or contributed by the Program Manager or the Program Manager's consultants and contractors. Ownership of the data in the Program Management Information System and the Program Management Plan does not include ownership of any proprietary software developed and owned by the Program Manager and used in connection with the collection, manipulation, or publication of the data in the Program Management Information System and the Program Management Plan. ~~Unless the Owner pays the licensing fee described in Section 10.7, the Owner's right to use any such proprietary software shall terminate at the time of termination of this Agreement.~~ The Program Manager shall take all steps reasonably necessary to allow the Owner to exercise the Owner's rights to own and utilize the data in the Program Management Information System and the Project Management Plan after termination of the Owner's rights to use any proprietary software. The Program Manager shall include provisions consistent with the provisions in this Section 6.3 in the Program Manager's agreements with the Program Manager's consultants. If the Program Manager rightfully terminates this Agreement for cause as provided in Section 8.4, the Program Manager's obligations under, and the Owner's rights to further use of proprietary software granted in, this Section 6.3 shall terminate. Ownership of data obtained from or compiled, developed or contributed by the Owner's consultants or contractors will be controlled by the terms of the Owner's agreements with those consultants or contractors.

## ARTICLE 7 CLAIMS AND DISPUTES

### § 7.1 General

§ 7.1.1 ~~The Owner and Program Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of substantial completion of the work on the project out of which the claim arises. The Owner and Program Manager waive all claims and causes of action not commenced in accordance with this Section 7.1.1.~~ All claims, disputes, or matters in controversy between Owner and Program Manager shall be discussed by the parties in good faith, and 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 the Owner's grievance policy [GF (LEGAL) and (LOCAL)] or other policy, as designated by Owner, and the timelines established in that policy. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator to be chosen by Owner and Program Manager within thirty (30) days after written notice by either party demanding mediation of a dispute from the other. Owner and Program Manager will share the cost of the mediation equally. The parties may agree in writing to some other form of alternative dispute resolution to replace or add to mediation.

§ 7.1.2 ~~To the extent damages are covered by property insurance required under Section 5.13, the Owner and Program Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth Section 5.13. The Owner or the Program Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.~~ Any dispute which cannot be resolved through negotiation, mediation or other mutually agreed form of ADR within six (6) months of the date of the initial demand for it by either party, may then be submitted to the appropriate court for resolution. The use of any ADR procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party. Nothing in this section will prevent either party from resorting to judicial proceedings if, (a) good faith

efforts to resolve the dispute under these procedures have been unsuccessful; or, (b) interim relief from a court is necessary to prevent serious and irreparable injury to one party or to others.

**§ 7.1.3** The Program Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Program Manager, its employees and its consultants in the performance of services under this Agreement. The Program Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage. **PROGRAM MANAGER SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, TRUSTEES, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES IN PROPORTION TO PROGRAM MANAGER'S LIABILITY, ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY OR ALL PERSONS, INCLUDING INVITEES AND EMPLOYEES OF THE DISTRICT, ARCHITECT, CONSTRUCTION MANAGER, PROGRAM MANAGER, CONTRACTOR OR SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK, WHICH MAY ARISE FROM OR BE CONNECTED WITH ANY ACT OF NEGLIGENCE ON THE PART OF PROGRAM MANAGER OR ANY BREACH OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT;** provided and except, however, that this indemnification provision shall not be construed as requiring Program Manager 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 wholly or partially by any act of negligence or breach of obligation under this Agreement by Owner or Owner's employees or agents, except Program Manager.

**§ 7.1.4** The Program Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 8.7.

## **§ 7.2 Meet and Confer**

**§ 7.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to a meet and confer session as a condition precedent to mediation. *[This Section is deleted.]*

**§ 7.2.2** The Owner and Program Manager shall endeavor to resolve claims, disputes and other matters in question during the meet and confer session. The meet and confer session shall be attended by the Owner and Program Manager or their authorized representatives who shall have the authority to bind the parties. The meet and confer session shall take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to the meet and confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy. *[This Section is deleted.]*

**§ 7.2.3** If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation in accordance with Section 7.3. *[This Section is deleted.]*

## **§ 7.3 Mediation**

**§ 7.3.1** Any claim, dispute or other matter in question arising out of or related to this Agreement not resolved by the meet and confer session shall be subject to mediation as a condition precedent to binding dispute resolution. *[This Section is deleted.]*

**§ 7.3.2** Unless the parties mutually agree otherwise, the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. *[This Section is deleted.]*



§ 7.3.3 The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. [This Section is deleted.]

§ 7.3.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.3, the method of binding dispute resolution shall be the following:  
(Check the appropriate box. If the Owner and Program Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 7.4 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)

[This Section is deleted.]

#### § 7.4 Arbitration

§ 7.4.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration. [This Section is deleted.]

§ 7.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question. [This Section is deleted.]

§ 7.4.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof. [This Section is deleted.]

§ 7.4.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. [This Section is deleted.]

#### § 7.4.4 Consolidation or Joinder

§ 7.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). [This Section is deleted.]

§ 7.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent. [This Section is deleted.]

§ 7.4.4.3 The Owner and Program Manager grant to any person or entity made a party to an arbitration conducted under this Section 7.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Program Manager under this Agreement. [This Section is deleted.]

## ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the Owner fails to make payments to the Program Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Program Manager's option, cause for suspension of performance of services under this Agreement. If the Program Manager elects to suspend services, the Program Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Program Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Program Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Program Manager's services. ~~The Upon resumption, the Program Manager's fees for the remaining services and the time schedules shall be equitably adjusted.~~ adjusted commensurate to the amount of work outstanding.

§ 8.2 If the Owner suspends the Program, the Program Manager shall be compensated for services performed prior to notice of such suspension. When the Program is resumed, the Program Manager ~~shall be compensated for expenses incurred in the interruption and resumption of the Program Manager's services.~~ The Program Manager's fees for the remaining services and the time schedules shall be equitably adjusted, may be equitably adjusted commensurate to the amount of work outstanding.

§ 8.3 If the Owner suspends the Program for more than 90 cumulative days for reasons other than the fault of the Program Manager, the Program Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 8.4 Either party may terminate this Agreement 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.

§ 8.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Program Manager for the Owner's convenience and without cause.

§ 8.6 In the event of termination not the fault of the Program Manager, the Program Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses ~~as defined in Section 8.7, then, if any. In such event, Program Manager's total fee for all services performed shall be computed under the foregoing provisions of this Agreement to cover services actually performed to the date of notice as set out in Section 8.5, and shall include compensation for services up to that date.~~

§ 8.7 Termination Expenses are in addition to compensation for the Program Manager's services and include expenses directly attributable to termination for which the Program Manager is not otherwise compensated. ~~[This Section is deleted.]~~

§ 8.8 In the event of termination of this Agreement, the Owner's rights to use information and materials provided by the Program Manager are set forth in Article 6.

## ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the jurisdiction identified below. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 7.4. (Identify the jurisdiction whose laws will govern this Agreement.)~~

The Parties agree that Texas law shall govern any dispute or proceeding arising out of this Agreement, and mandatory venue for any legal proceeding shall be in a state district court of Reagan County, Texas.

§ 9.2 The Owner and Program Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Program Manager shall assign this Agreement without the written consent of the other, ~~except that the Owner may assign this Agreement to a lender providing financing for the Program if the lender agrees to assume the Owner's rights and obligations under this Agreement.~~ other.

§ 9.3 If the Owner requests the Program Manager to execute certificates, the proposed language of such certificates shall be submitted to the Program Manager for review at least 14 days prior to the requested dates of execution. ~~If the Owner requests the Program Manager to execute consents reasonably required to facilitate assignment to a lender, the Program Manager shall execute all such consents that are consistent with this Agreement, provided the proposed~~

consent is submitted to the Program Manager for review at least 14 days prior to execution. The Program Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 9.4 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 Program Manager.

§ 9.5 Unless otherwise required in this Agreement, the Program Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the project sites.

§ 9.6 The Program Manager shall have the right to include photographs of the projects in the Program among the Program Manager's promotional and professional materials. The Program Manager shall be given reasonable access to the projects to take photographs. However, the Program Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Program Manager in writing of the specific information considered by the Owner to be confidential or proprietary. ~~The Owner shall provide professional credit for the Program Manager in the Owner's promotional materials for the Program proprietary and shall not disclose images or confidential information of Owner's students.~~

§ 9.7 ~~If the Program Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.7.1. [This Section is deleted.]~~

§ 9.7.1 ~~If the Program Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Program, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 9.7. [This Section is deleted.]~~

§ 9.8 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 9.9 The Owner agrees not to solicit or hire the Program Manager's employees who are involved with the Program prior to one year after completion of the Program. If the Owner hires a Program Manager's employee involved with the Program prior to one year after completion of the Program, the Owner agrees to pay the Program Manager an amount as set forth below.

*(Insert stipulated sum or method of calculation for the amount to be paid to the Program Manager.)*

[Redacted]

## ARTICLE 10 COMPENSATION

§ 10.1 For the Program Manager's Basic Services described under Article 3, the Owner shall compensate the Program Manager as follows:

*(Insert amount of, or basis for, compensation, including stipulated sums, hourly or monthly billing rates, direct salary expense plus multiple, or monthly fee.)*

[Redacted]

§ 10.2 The hourly labor cost rates and billing rates for services of the Program Manager and the Program Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Program Manager's and Program Manager's consultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

[Redacted]

**Employee or Category**

**Rate**

§ 10.3 For Additional Services designated in Section 4.1, the Owner shall compensate the Program Manager as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

§ 10.4 For Additional Services that may arise during the course of the Program, including those under Section 4.3, the Owner shall compensate the Program Manager as follows:

*(Insert amount of, or basis for, compensation.)*

§ 10.5 Compensation for Additional Services of the Program Manager's consultants when not included in Sections 10.3 and 10.4 shall be the amount invoiced to the Program Manager plus zero percent ( 0 %), or as otherwise stated below:

**§ 10.6 Compensation for Reimbursable Expenses**

*[This Section is deleted.]*

§ 10.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Program Manager and the Program Manager's consultants directly related to the Program, as follows:

- ~~.1~~ Transportation and authorized ~~out-of-town travel and subsistence; out-of-District travel and subsistence in accordance with Owner's policies and guidelines (travel to and from the District is excluded);~~
- ~~.2~~ Long distance services, dedicated data and communication services, teleconferences;
- ~~.3~~ Fees paid for securing approval of authorities having jurisdiction over the projects;
- ~~.4~~ .3 Fees paid for testing, surveys or other data obtained at the request of the Owner;
- ~~.5~~ .4 Printing, reproductions, plots, standard form documents;
- ~~.6~~ .5 Postage, handling and delivery;
- ~~.7~~ Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- ~~.8~~ .6 Professional photography and presentation materials requested by the Owner;
- ~~.9~~ .7 Program Manager's consultants' expense of professional liability insurance dedicated exclusively to this Program, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Program Manager's consultants;
- ~~.10~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.11~~ Site office expenses, if authorized in advance by the Owner;
- ~~.12~~ Customization of the Program Management Information System; and
- ~~.13~~ Other similar Program related expenditures. .8 Other similar Program-related expenditures approved by Owner in advance.

§ 10.6.2 For Reimbursable Expenses the compensation shall be the actual expenses incurred by the Program Manager and the Program Manager's consultants plus   percent (   %) of the expenses incurred consultants. Owner shall pay the cost of such Reimbursable Expenses, without mark-up; Program Manager shall receive no additional compensation for incurring Reimbursable Expenses.

§ 10.6.3 ~~If the insurance requirements listed in Section 2.7 exceed the types and limits the Program Manager normally maintains and the Program Manager incurs additional costs to satisfy such requirements, the Owner shall reimburse the Program Manager for such costs as set forth below:~~



[This Section is deleted.]

### § 10.7 Compensation for Use of Program Manager's Proprietary Software

If the Owner terminates the Program Manager for its convenience under Section 8.5, or the Program Manager terminates this Agreement under Section 8.3, or upon completion of the Program Manager's services under this Agreement, the Owner shall pay a licensing fee, as compensation for the Owner's continued use of the Program Manager's proprietary software developed and owned by the Program Manager in accordance with Section 6.3, as follows:

### § 10.8 Payments to the Program Manager

~~§ 10.8.1 An initial payment of \$ ( ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. [This Section is deleted.]~~

~~§ 10.8.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Program Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Program Manager. (Insert rate of monthly or annual interest agreed upon.)~~

~~% Application for Payment to Owner. Such Application for Payment shall describe in general terms the services performed and the Reimbursable Expenses incurred for the period covered by the Application for Payment. Reimbursable Expenses shall be supported by receipts, invoices or other appropriate documentation to verify the amount requested.~~

~~Progress Payments, when due, shall be made to Program Manager in accordance with Owner's ordinary business practices. Any invoice, or portion thereof, for Progress Payments or Additional Services to which Owner does not object and that remains unpaid after forty-five (45) days, shall incur simple interest as set out in Texas Government Code Chapter 2251, Subchapter B. Nothing contained herein shall prevent or otherwise limit Owner from withholding any payment or portion of a payment for which Owner has provided Program Manager notice of a bona fide dispute or objection.~~

~~§ 10.8.3 The Owner shall not withhold amounts from the Program Manager's compensation to impose a penalty or liquidated damages on the Program Manager, or to offset sums requested by or paid to contractors or other consultants for the cost of changes to projects in the Program, unless Owner provides notice of a bona fide disputed amount pursuant to Texas Government Code Chapter 2251, Subchapter C, the Program Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

~~§ 10.8.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of three years after the termination or completion of this Agreement.~~

## ARTICLE 11 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

**§ 11.1 Independent Contractor.** Program Manager recognizes that Program Manager is engaged as an independent contractor and acknowledges that Owner shall have no responsibility to provide Program Manager or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Program Manager, in accordance with Program Manager's status as an Independent Contractor, covenants and agrees that Program Manager shall conduct Program Manager's Services consistent with such status, that Program Manager will neither hold Program Manager out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that Program Manager shall not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Program Manager hereby agrees to make Program Manager's own arrangements for any of such benefits as Program Manager may desire and agrees that Program Manager is responsible for all income taxes required by applicable law.

**§ 11.2 Prohibition Of Additional Services By Any Company Having Common Ownership Of Program Manager.** Any firm having common ownership with the Program Manager shall, unless otherwise agreed by the Owner, be prohibited from providing program management services on, or the construction of, the Project. In addition, no employee of the Owner shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. This Subsection is subject to provisions of the Texas Local Government Code, Chapters 171 and 176.

**§ 11.3 Payment From Current Revenues.** The Owner warrants that all payments required of it under this Agreement will be made from current revenues available to the Owner.

**§ 11.4 Felony Convictions.** Pursuant to Texas Education Code §44.034, Program Manager must give advanced written notice to the Owner if the Program Manager or an owner or operator of the Program Manager has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Program Manager failed to give such notice or misrepresented the conduct resulting on the conviction. This provision requiring advanced notice does not apply to a publicly held corporation.

**§ 11.5 Sexual Harassment.** Sexual harassment of employees of the Program Manager or employees or students of Owner by employees of the Program Manager is strictly forbidden. Any employee of the Program Manager who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Program Manager, including dismissal.

**§ 11.6 Immigration Law.** Any bid or proposal document shall contain notice to all contractors and subcontractors working on this Project for Owner that it shall comply with all federal, state and local immigration laws; verify all employees' eligibility to work in this country; and, indemnify the Owner for any damages and legal fees that the Owner incurs as a result of a contractor's and/or subcontractor's failure to comply with applicable immigration laws.

**§ 11.7 Records.** Program Manager shall keep and maintain full and complete documentation and accounting records concerning all services performed by it. Program Manager shall maintain all records concerning the Project for a period of four (4) years after its completion. Program Manager shall make such documents and records available to authorized representatives and/or agents of the Owner for inspection at any reasonable time. Should this Project be subject to litigation, the Program Manager shall maintain all records concerning this Project for four (4) years or until the litigation is completed, whichever is longer.

**§ 11.7.1** At any time during the term of this Agreement and for a period of four (4) years thereafter the Owner or a duly authorized agent and/or representative of the Owner, or the State of Texas, at its expense and at reasonable times, reserves the right to audit the Program Manager's records and books relevant to all services provided under this Agreement. In the event such an audit by the Owner reveals any errors/overpayments by the Owner, the Program Manager shall refund the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owing the Owner from any payments due the Program Manager.

**§ 11.7.2** In the event a federal grant or other federal financing participates in the funding of this Project, the Program Manager shall permit access to and grant any federal representatives the right to examine Program Manager's books covering its work under this Agreement. The Program Manager shall comply with employment and subcontract federal requirements as they relate to this Project.

**§ 11.8 Owner is a Governmental Entity.** Program Manager 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 this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law. In any litigation (or arbitration if mutually agreed upon in writing) arising under this Agreement, the types and amounts of damages recoverable shall be subject to Subchapter I of Texas Local Government Code Chapter 271. In any litigation or claim under this Agreement, reasonable and necessary attorney's fees may be awarded to the prevailing party, as allowed by Texas Local Government Code §271.153.

**§ 11.9 Date of Delivery of Notice.** Whenever this Agreement requires that notice be given, such notice shall be in writing and may be served either personally or sent by United States mail, postage prepaid, addressed to the person and

the addresses set forth below each party's name. Notice will be deemed delivered when actually received, excluding weekends and school holidays.

**§ 11.10 Counterparts.** This Agreement may be executed by the parties in one or more counterparts, each of which will be an original and all of which will constitute one and the same instrument. A facsimile signature will be deemed an original.

**§ 11.11 Severability.** Should any provision in this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect.

**§ 11.12 Non-Waiver.** None of the provisions of the Agreement shall be considered waived by either party unless such waiver is specified in writing.

**§ 11.13 Discrimination Prohibited.** It is the policy of Owner that in connection with all work performed under contracts, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, handicap, or marital status. Program Manager agrees to comply with applicable Federal and Texas laws. In addition, the Program Manager agrees to require any consultants or subcontractors employed on the Project to certify, on a form provided by Owner, their like compliance with this Subsection.

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

**§ 11.15** By executing this Agreement, Program Manager verifies that it does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement. Pursuant to Texas Government Code Chapter 2274, as enacted in SB13 of the 87<sup>th</sup> Legislature, if Program Manager is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Program Manager represents and warrants to the Owner that the Program Manager does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

**§ 11.16** By executing this Agreement, Program Manager verifies that it does not discriminate against firearm entities or firearm trade associations, and it will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. Pursuant to Texas Government Code Chapter 2274, as enacted in SB19 of the 87<sup>th</sup> Legislature, if Program Manager is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Program Manager represents and warrants to the Owner that the Program Manager does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.

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

**§ 11.18** By executing this Agreement, Program Manager verifies that it is not an abortion provider or an affiliate of an abortion provider.

**§ 11.19**

- .1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Program Manager agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the Owner or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner. If the Owner receives a written request for public information related to this Contract that is in the possession or custody of the Program Manager and not in the possession or custody of the Owner, the Owner shall send, not later than the third business day after the date the Owner receives the written request, a written request to the Program Manager that the Program Manager provide that information to the Owner.
- .2 The Program Manager must:
- .1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract;
  - .2 Promptly, within four business days, provide to the Owner any requested contracting information that is in the custody or possession of the Program Manager upon request of the Owner; and,
  - .3 On completion of the Contract, either:
  - .1 Provide to the Owner at no cost all contracting information related to the Contract that is in the custody or possession of the Program Manager; or
    - .2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.
    - .3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Program Manager agrees that the contract can be terminated if the Program Manager knowingly or intentionally fails to comply with the requirements of that subchapter.
    - .4 Further, under Texas Government Code Chapter 552.372(c), the Owner may not accept a bid for or awarding of a contract to an entity that the Owner has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the Owner determines and documents that the entity has taken adequate steps to ensure future compliance.
    - .5 If a Program Manager fails to provide to the Owner the requested information, Texas Government Code Chapter 552.373 requires the Owner to notify the Program Manager in writing of the failure and allow 10 business days to cure the violation. Owner may terminate the Contract if Program Manager fails to remedy the failure, Owner determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Program Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Program Manager.

**§ 12.2** This Agreement is comprised of the following documents listed below:

- .1 AIA Document C171™-2013, Standard Form Agreement Between Owner and Program Manager
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*



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

**REAGAN COUNTY INDEPENDENT SCHOOL DISTRICT**

\_\_\_\_\_

OWNER (Signature)

Eric Hallmark, Superintendent  
(Printed name and title)

PROGRAM MANAGER (Signature)

\_\_\_\_\_  
(Printed name and title)

Sample  
DRAWING