

SILVERTON INDEPENDENT SCHOOL DISTRICT
700 Loretta Street
PO Box 608
Silverton, TX 79257



**REQUEST FOR QUALIFICATIONS
FOR DESIGN BUILD SERVICES
2026-02**

for
2026 Bond Program Projects
February 27, 2026

**RFQ FOR DESIGN BUILD SERVICES
2026 Bond Program Projects**

Pursuant to Texas Government Code Chapter 2269, Subchapter G, as it currently exists or may hereafter be amended or replaced, this Request for Qualifications (RFQ) is intended to solicit qualifications from design-build firms (“Respondents”) for potential design and construction services for the proposed and preliminary construction, renovation, rehabilitation, alteration or repair of Silverton Independent School District (“Owner” or “District”) facilities including, but not limited to: renovations to the football stadium/field, gym and other athletic facilities, and ag shop (collectively the “2026 Bond Program Projects”).¹ For the purpose of this RFQ, “Respondent” refers to any entity or team that is qualified to provide all of the design and facility construction services as listed in this RFQ. It is the intent of Owner to select the Respondent demonstrating the best overall value to the Owner and enter into an agreement for turnkey design-build services.

Sealed Statements of Qualifications (“Responses”) shall be received no later than:

March 11, 2026 @ 1:00 p.m., LOCAL TIME

And shall be submitted to:

**Silverton ISD
ATTN: Michelle Francis, Superintendent
Mailing Address: PO Box 608, Silverton, TX 79257
Hand Delivery: 700 Loretta St., Silverton TX 79257**

Please mark envelopes with the following:

**Design-Build Services
2026 Bond Program Projects
RFQ #2026-02**

Responses received after the deadline will not be considered and should include all documents and forms. Please enclose one (1) original, two (2) hard copies, and one (1) electronic copy on a USB drive of your response with the appropriate annotation to the address above. Proposals shall only be sought from those short-listed Respondents selected by Owner.

Owner will not accept Proposals transmitted via facsimile or email. The Respondent shall be responsible for timely delivery of a Proposal via U.S Mail or other mail delivery methods. Proposals received after the specified time will not be considered. No responsibility will be attached to any officer or staff of Owner for the opening of a response not properly addressed and/or identified. Requests for clarification of any part of this solicitation must be made in writing no later than noon on March 6, 2026, 5 calendar days before the deadline. Such requests may be emailed to Michelle Francis at michelle.francis@silvertonisd.net (School Superintendent).

¹ The 2026 Bond Program Projects are only proposed and preliminary in nature and the timing or undertaking of such projects has not yet been determined.

Public Notice

Issuance of Request for Qualifications for Design and Construction Services

Silverton Independent School District (“District” or “Owner”) is soliciting Statements of Qualifications from qualified Design-Build Firms/Teams (“Design-Builder” or “D/B”) interested in providing professional design and construction services for the renovation and improvements to various District facilities.

Owner’s Central Administration Office: 700 Loretta St., Silverton, TX 79257

Project Description: Construction and renovation of and improvements to school facilities (the “2026 Bond Program Projects”)*, including, but not limited to, the:

- football stadium/field,
- gym and other athletic facilities, and
- ag shop

** These projects are only proposed and preliminary in nature and the timing or undertaking of such projects has not yet been determined.*

The Design-Builder’s scope of work and services requested include:

Turnkey services of a design-build firm with the capability to complete the following for the Project:

- Analysis and assessment of Owner’s facilities to determine deficiencies and needs
- Development of project proposal(s) for Owner’s consideration
- Pre-construction project planning, including assistance in the preparation of a schedule, preliminary cost estimate and value engineering measures if needed.
- Preparing site, architectural, structural, mechanical, plumbing and electrical design plans
 - a. Building Design: building plan configuration and elevation elements for the project, including foundation, structural and roof systems, building fenestration and openings, overall dimensions, materials testing requirements (except those set out in Texas Government Code §2269.058(a)), Mechanical/Electrical/Plumbing design including systems, equipment and calculations, systems review and coordination and integration to include all utilities and controls.
- Development and refinement of cost estimates and project schedules.
- Installation / implementation / construction of the approved projects.
- Construction administration and observation including conferences, weekly site observations and meetings.
- Project closeout, commissioning of the installed systems, and establishment of warranties and guarantees.

Anticipated Project Budget:

Silverton ISD estimates an approximate construction budget of \$10,400,000² for completion of this project including all costs and fees.

² The estimated 2026 Bond Program budget is subject to refinement, as District needs and priorities are assessed.

Anticipated Design/Build Procurement Schedule:	Date
Issue/Advertise RFQ in official advertising publications	February 27 & March 6, 2026
Deadline for written questions and clarifications on RFQ	March 6, 2026 at 12:00 p.m.
Deadline for submission of Statement of Qualifications	March 11, 2026 at 1:00 p.m.
Deadline for Proposals from short listed Respondents, if necessary	March 23, 2026
Present short list to School Board for ranking/selection, if necessary	By March 26, 2026 (subject to extension)
Contract negotiations	Immediately following Board selection and ranking

Procurement Process:

a. Phase I RFQ

The Request for Qualifications (RFQ) is the first step in a multi-step process aimed at identifying one or more qualified Respondents. In Phase I, the District will evaluate each Respondent’s experience, technical competence, and capability to perform, the past performance of the Respondent’s team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that **cost-related or price-related evaluation factors shall not be considered and are not permitted.**

b. Selection of Qualified Provider or Short-list of Providers

A committee has been formed to review responses submitted. Based on the selection criteria described in this document, the committee may short-list a maximum of five (5) of the most qualified Respondents to provide proposals. The District may conduct interviews and retains the right to select only one Respondent at this stage and negotiate a contract. The District may also determine that no qualified submittals have been received and reject all submittals.

c. Oral Presentation (*Owner’s Option*)

Oral presentations may be required of each of the interested short-listed Respondents covering any unique qualities, methodologies, or approaches taken to differentiate from other Respondents. Short-listed Respondent’s will be asked to provide additional information (proposals) to the District regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability to meet schedules, costing methodology, or other factors as appropriate. This additional information will be used in addition to prior information received in further evaluating the short-listed Respondent’s to determine a rank-order of the short-listed firms.

d. Negotiate Project Development Agreement

The Owner shall select the design-build firm that submits the proposal offering the best value for the district on the basis of the published selection criteria and on its ranking evaluations and enter into negotiations. It is anticipated that negotiations would

encompass all phases of work, including but not limited to: engineering fees, preconstruction services, labor rates, contingency/risk, bonds, insurance, and markups for overhead and profit on subcontractors, as well as any other items the Owner feels are appropriate. If negotiations are successful, Owner and the highest ranking Respondent will enter into an agreement to develop the project proposal(s) as outlined in this RFQ. If an acceptable agreement cannot be reached between the Owner and the highest ranking Respondent, the Owner may choose to end negotiations with the highest ranked Respondent and negotiate with the next highest ranking Respondent, until a suitable contract can be reached or all Respondents have been rejected.

e. Project Development

The selected Respondent will develop the project proposal(s) based on the preliminary scope outlined in Appendix A. Owner expects the Respondent to complete the project development on a contingent basis (i.e. not bill for the development until completed and the implementation is funded) and roll the agreed upon cost of the development into the implementation cost. The owner reserves the right to pay for the development separately. At the conclusion of Project Development, Respondent will provide Owner with a Guaranteed Maximum Price (GMP) for the agreed upon scope of work.

f. Project Implementation

After finalizing work scope and GMP, the Respondent will provide turnkey construction and construction management services.

Design Builder Evaluation / Selection Criteria and Scoring

Each Respondent to this RFQ will be evaluated on its experience, technical competence, capability to perform, and past performance, and short-listed based on their Statement of Qualifications score (100 points maximum) as determined through a qualification review process as noted above and scoring criteria noted below³:

Criteria	Available Points
1. Respondent's (and team's) Experience	20 points
2. Respondent's (and team's) Technical competence	20 points
3. Respondent's (and team's) Capability to perform	35 points
4. Respondent's (and team's) past performance	25 points
TOTAL	100 points

The District may short list up to 5 qualified Firms/Teams who may be asked to provide further information and possibly interview with an evaluation committee made up of District representatives to help determine ranking before final selection is made.

³ Price or cost related criteria shall NOT be considered at this Phase and must not be included in the response.

Explanation of Project Team by Submitting Design-Build Firms/Teams

Each applicant submitting qualifications for this RFQ shall include an explanation of its Project team which shall consist of either:

1. A list of the licensed design professionals, licensed contractors and licensed subcontractors whom the Design-Builder proposes to use for the Project's design and construction; or
2. An outline of the strategy the Design-Builder plans to use for sub-contractor selection.

End of Public Notice

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SECTION ONE

DEFINITIONS

1.01 Definitions of Terms in RFQ

Unless the context suggests otherwise, the terms “Firm/Team”, “Contractor”, “Proposer”, “Bidder”, “Submitter”, “Respondent” or “Vendor” as used in this RFQ (whether capitalized or not) shall refer to the same legal entity that submits qualifications and is responsible for responding to this RFQ.

Whenever the terms “District” or “Owner” are used, it means the Silverton Independent School District, Silverton, Texas.

Similarly, unless the context suggests otherwise, the terms “Bid”, “Qualification”, or “Response” shall refer to the formal Statement of Qualifications given in response to this RFQ by the submitting entity incorporating all required elements of this RFQ necessary for the District to determine whether the submitting entity is a responsible, responsive Firm/Team.

Whenever the term “RFQ,” is used, the reference is to this Request for Qualifications or portions thereof, together with any exhibits, attachments, or addenda it may contain.

1.01.1. Whenever the terms “shall,” “will,” “must,” or “is required” are used in the RFQ, the referenced task is a mandatory requirement of this RFQ. Failure to meet any mandatory requirement will be cause for rejection of a submittal.

1.01.2 Whenever the terms “can,” “may,” or “should” are used in the RFQ, the referenced specification is discretionary. Therefore, though the failure to provide any items so termed will not be cause for rejection, the Selection Committee may consider such failure in evaluating the quality of the submittal.

1.01.3 Whenever the terms “apparent successful” or “top-ranked” or “highest ranking” firm/company or offeror are used in this document, the reference is to the firm that the Selection Committee ultimately judges to have submitted the Response best satisfying the needs of the District in accordance with the RFQ. The selection of an apparent successful firm/company does not necessarily mean the Selection Committee accepts all aspects of the firm’s submittal or Response.

1.01.4 Whenever the term “submittal” is used in the RFQ, the reference is to the response offered by a firm, person or corporation in accordance with the RFQ. The submittal responds only to the RFQ.

1.01.5 Whenever the term “Selection Committee” or “Review Committee” is used in the RFQ, the reference is to the District’s representatives responsible for administering and conducting the evaluation and selection process for making recommendations to the Board for this RFQ.

1.01.6 “Design-Build” refers to the construction project delivery method in which, among other things, the District holds a single contract with a business entity that has responsibility both to design and to construct a project, and that holds the trade contracts.

1.01.7 “Lead Design-Builder” refers to the design-build team member that will contract with the District for all work and holds all responsibility of project success, performance, and completion.

1.01.8 “Design Professional” (an inclusive term for all licensed building professionals), “Architect of Record,” an/or “Engineer of Record” all refer to the project's architect(s) and/or engineer(s), whose responsibilities generally include programming, design, code compliance, and detailing of the facility. Under the Design-Build delivery methodology, the Design Professional is an integral part of the Design- Builder entity under single contract with the District.

1.01.9 “Building Commissioning” refers to a formal and systematic process of documentation, adjustment, testing, verification, and training, focused on quality assurance and performed specifically to ensure that the finished facility operates in accordance with the District's documented project requirements and the construction documents.

1.01.10 “Commissioning Provider” refers to the entity or person providing building commissioning services for a project.

1.01.11 “District's Design Criteria Package” is a written document attached hereto at Exhibit B that details the functional requirements, objectives and the expectations of how the project will be used and operated, and may include without limitation, descriptions of: work sites, survey information, interior space requirements, material quality standards, conceptual criteria, equipment requirements, cost and budget estimates, schedules, quality assurance and control standards site development requirements, parking requirements, utilities, and code/ordinance requirements.

1.01.12 “Qualifications Submittal” and “Initial Written Submittal” both refer to a firm's response to the RFQ.

1.01.13 “Firm” shall be interpreted as referencing the design entity, the construction entity, or the combined (e.g., joint venture) entity, as is reasonable.

1.01.14 “Design/Builder's Fee” shall be proposed by the Design Builder following the RFQ process and shall be defined as a specific dollar amount (stated as a lump sum) or percentage and agreed upon by all parties, **but shall not be considered during the RFQ process.**

End of Section One

SECTION TWO
SCOPE OF WORK - DESIGN CRITERIA PACKAGE

2.01 Purpose of the RFQ and Design-Builder Responsibilities

The Design-Builder will be expected to provide concurrent design and construction turnkey activities for this project resulting in a finished, fully usable facility(ies) that satisfy all project requirements and contract terms. The Design-Builder, as the sole responsible source for total project compliance and construction related performance (including architectural programming, design, and construction services) will hold all design professionals, testing services (except those excluded by Texas Government Code §2269.058(a)), trade contractors and trade supplier contracts. The District's Design Criteria Package is attached hereto as Exhibit B.

2.02 Location of the Project

The location of the work is: Silverton, TX 79257

NOTE: Throughout the duration of the project, the District **WILL NOT** provide workspace for the Firm/Team. The selected Design-Build Team is responsible for/must provide its own workspace.

2.03 Scope of Work

General

The "scope of work" includes all architectural and engineering design services (including all civil and geotechnical engineering to the extent needed, construction, costs associated with any required permits, procurement, materials, labor, qualification of subcontractors (if subcontractors are required), construction management, equipment rental, and tie-in or connection to the electrical, water, phone and other utility systems as required by local public utilities.

Design

Respondent's design services shall include, as needed, but not be limited to:

- a. Preparation of all necessary plans and permits.
- b. Confirmation of suitability of the proposed construction/renovation at the proposed site.
- c. Detailed project drawings including but not limited to site plan(s) and engineering surveying, Project milestones, permits, equipment drawings, structural drawings, mechanical and electrical drawings, and parking lot plans and design.
- d. Defining the concrete testing and other testing requirements.

The following is a preliminary scope of work that may be modified during design and contract negotiations with the selected Design-Build Team.

Site Inventory and Evaluation of District's Criteria Confirmation

1. Site investigations, including survey, subsurface utility investigations, geotechnical investigations, to verify existing conditions if necessary.
2. Preliminary evaluation of proposed site use, material selection, building systems, equipment and provide recommendations on constructability, time, labor and scheduling factors related to project cost.
3. Prepare written report summarizing District's criteria.

Schematic / Preliminary Design (SD)

1. Prepare site, architectural, structural, mechanical, plumbing and electrical schematic design plans based on criteria document for the consideration of the District Staff and

- the District's Representative.
2. SD Phase plans will minimally include:
 - a. Site Development design criteria including: site access, easements, circulation and vehicular access, setback requirements, parking areas, general landscape concept, lighting areas, utility routing and connections.
 - b. Building Design information including: design intent, space requirements and planning criteria, preliminary selection of building systems and materials, code compliance, building system integration with existing utilities.
 3. The final facility needs to include among the required or accessory items that are set forth in the District's Design Criteria Package Exhibit B and inherent to the design of the following:
 - Construction and renovation of school facilities (the "2026 Bond Program Projects"), including:
 - football stadium/field,
 - gym and other athletic facilities, and
 - ag shop
 4. Develop preliminary estimate of construction cost setting forth in detail quantities of materials, labor, profit, overhead, insurance etc. for the project including all site work.
 5. Attend District and user meetings to coordinate and resolve value engineering, constructability, construction phasing and scheduling issues in the preliminary design.
 6. Develop Design-Builder's Response detailing contract sum, estimated trade costs, proposed date of substantial completion and list of key Design-Build personnel and suppliers.

Design Development (DD)

1. Based on the approved SD plans, satisfactorily resolve all review comments from prior design phases and further refine the design to include the following revised and additional information:
 - a. Site Design: refine design criteria including site access, lighting, utility routing and connections.
 - b. Building Design: review and confirm information including: design intent, space requirements and planning criteria, preliminary selection of building systems and materials, code compliance, building system integration with existing utilities.
2. Expand outline specification to Design Development level and integrate systems, controls, products and procedures for architectural, civil and MEP.
3. Review and confirm total original budget from Schematic Design phase review. Review any proposed value engineering items, final strategy and reconcile variances.
4. Review, update and confirm project schedule.
5. Attend District and user meetings to coordinate and resolve value engineering, constructability, construction phasing and scheduling issues in the preliminary design.

Permitting, Reviews and Approvals

1. Review and/or present design concepts to all governmental authorities having jurisdiction over the Project and any other regulatory agencies whose approval is necessary for the development of the site.
2. Submit plans and applications to regulatory agencies.
3. Secure approvals from all other local and state agencies as required for the site development.
4. Coordinate the construction or relocation of privately owned utilities if necessary.
5. Attend meetings as necessary for all approvals. Provide responses and modifications to regulatory comments.

Construction Documents (CD)

1. Based on the approved DD plans, satisfactorily resolve all review comments from prior design phases and prepare and finalize all construction drawings and specifications to minimally include: building systems, site utilities and components that will form the basis for the project's Construction Documents sufficiently complete to support the prepared budget, obtain necessary permits and construct the project.
2. Prepare construction documents, cost estimate and updated project schedule; reconcile cost estimate with construction estimate.
3. Incorporate bid alternates as necessitated by the project budget.
4. Attend a School Board meeting to present final design.
5. Prepare a GMP

Construction Administration

1. Provide construction administration and observation associated with the work and in coordination with the District's Representative.
2. Provide interpretations of prepared drawings and specifications, shop drawing review and approval as well as preparation of change orders and construction change directives.

Construction

Respondent's scope of construction shall include but not be limited to the following, as may be applicable:

1. Evaluation of subcontractors (subcontractors shall be approved in advance by Owner).
2. Mobilization and demobilization.
3. Bending and setting rebar and anchor bolts.
4. Placement of concrete. Note: Concrete Testing Lab shall be selected by Owner with assistance from Design-Builder.
5. Rental of cranes, man lifts, scaffolding, etc., as may needed
6. Placement of electrical components including conduit, cables, terminals, etc.
7. Site utilities including domestic water, electrical service and site lighting.
8. Testing of systems.
9. Site cleanup.

Post Construction Phase/Deliverables

1. Prepare as-built documents based on information received from the contractor in AutoCAD or BIM format or in such other format as the District requires.
2. Assist in project closeout and establishment of warranties and guarantees.
3. Present to required departments/agencies for review; responsible for all State, County, and City permit applications and approvals.

2.04 Project Budget

Silverton ISD estimates an approximate Construction Budget of \$10,400,000 for completion of this project including all costs and fees. Total costs include construction related expenses; architectural programming, design and construction related services; testing services; public jurisdiction fees and charges; permits; and other building related professional service fees necessary to fully complete the project. See Owner's Design Criteria Package at Exhibit B for identification of each subproject and estimated budget at each proposed site.

2.05 Pre-Construction Project Planning

The Design-Builder, as a part of its design and its preconstruction services, will assist with developing a strategy for the best approach for the successful completion of the project including guidance and assistance in the preparation of a schedule and a reliable, preliminary cost estimate along with evaluations of any value engineering measures. At an appropriate point during the project and prior to contracting, the District will ask the Design-Builder to commit to a GMP for all its design and construction services.

2.06 Safety

1. Safety Coordinator
Respondent shall provide a safety coordinator on site for the duration of the Project. The coordinator will ensure that all construction activity adheres to Owner approved safety & construction plan.
2. Safety Plan
Respondent is required to prepare a safety plan, and method statement, and operate the safety plan as the work progresses and it shall be approved by Owner.
3. Minimum Safety Requirement to Be Included in the Safety Plan
The work site is to be cordoned off using a system that will prevent workers from having direct and continuing contact with District Students, or will provide workers with criminal histories acceptable to District. Minimum required personal protective equipment (PPE) shall include hard hat, safety glasses with side shields, full length work pants, steel toed safety shoes. OSHA approved fall protection when working above six (6) feet above grade.

2.07 Anticipated Schedule

The District reserves the right to make adjustments to this schedule as necessary.

Preliminary Project Schedule:	Date	Time
Issue/Advertise RFQ in official advertising publications	February 27 & March 6, 2026	
Deadline for written questions and clarifications on RFQ	March 6, 2026	12:00 p.m.
Deadline for submission of Statement of Qualifications	March 11, 2026	1:00 p.m.
District completes qualification evaluation to establish a shortlist of firms remaining. District notifies shortlisted firms and schedules interviews (if required.)	March 13, 2026	
Request for Proposal from short listed Respondents & complete interviews of short-listed firms (if needed)	March 23, 2026	5:00 p.m.
Present shortlist to School Board for ranking and selection	By March 26, 2026 (subject to extension)	
Contract Negotiations	Immediately following board selection	
Contract Approval	Within 30 days of selection	
Target Date for Project Completion	By June 2028	

2.08 Project Delivery and Objectives

At all times and project stages the Design-Builder shall act in the best interests of the District and use its best efforts to deliver the project in an expeditious and cost-effective manner consistent with the District's project requirements, time constraints and budget. The Design-Builder shall develop a contractually obligated overall project schedule and will be responsible for methods of construction, safety, scheduling and coordination of all construction work in addition to miscellaneous contracts required for completion of the project within its predetermined budget limits and schedule.

The District expects all parties to this project to work closely together and deal appropriately with project conditions to finish the job successfully. **A spirit of cooperation, collaboration and a commitment among professional design and construction services providers to work in the best interests of the project is of utmost importance.**

End of Section Two

SECTION THREE
DESIGN-BUILDER EVALUATION AND SELECTION CRITERIA

3.01 Design-Build Team Experience Requirements and Capabilities

Responders should identify their Team’s experience with public sector design-build projects and specifically describe those projects that best characterize the proposers’ capabilities including work quality and cost control measures. These projects must have included the completion of construction drawings, technical specifications and construction estimates that led to a complete constructed project currently in operation. Completed public sector projects and experience with the public bidding process is preferred.

At a minimum, successful submittals shall demonstrate experience and technical competence with the following requirements:

1. Responsively and successfully designing to a user program.
2. Demonstrated history of successful collaboration constructing complex facilities utilizing a Design- build methodology.
3. Obtaining permits through the authority having Jurisdiction permitting processes and/or Inspections/Building Permit Department and
4. Effectively providing contract and construction administration services utilizing effective team communication and working methods.

3.02 Design-Build Team Minimum Qualifications

Firms must meet the following criteria. Firms that do not meet these criteria are not eligible and automatically disqualified.

1. Firm’s “Designer(s) of Record” MUST have a current Texas Architectural and/or Engineering license(s) as appropriate for their portion of the design work.
2. Firm’s “Builder” MUST have a current Texas Contractor’s license with an unlimited building classification.
3. Lead Design-Build firm MUST have bonding capacity to provide a Labor and Material Payment and Performance bonds with coverage each equal to the total cost of the project.
4. Lead Design-Build firm MUST be able to get a Builder’s Risk Insurance Policy for this project with minimum coverage equal to the total cost of the project.
5. Lead Design-Build firm MUST agree to keep and maintain insurance for the duration of the Agreement including but not limited to commercial general liability, automobile liability, workers’ compensation, employer’s liability, and umbrella coverage with at least the minimum limits shown below. The Design Builder shall furnish the District with certificates of insurance for each type of insurance described herein. The District reserves the right to negotiate different limits and coverage in the final contract.

Commercial General Liability:	\$1,000,000 per occurrence
Commercial Auto Liability:	\$1,000,000 combined single limit
Excess (Umbrella) Liability:	\$1,000,000
Workers' Compensation:	Statutory Benefits
Employer's Liability:	\$1,000,000 per accident/ \$1,000,000 disease, policy limit \$1,000,000 disease, each employee

Professional Liability (Errors & Omissions) coverage for Architect of Record and Engineer(s) of Record shall provide coverage not less than \$1 million per claim. (The District reserves the right to negotiate different limits and coverage in the final contract.)

All insurance companies must be authorized to do business in Texas.

NOTE: In order to be deemed eligible for evaluation, the submitting lead Design-Build firm must include the Declaration Statement (signed) included in this RFQ attesting to the above requirements and coverages in its submittal.

When a Board makes a public work contract for constructing, altering, or repairing a public building or carrying out or completing any public work, it shall require the Contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds shall be executed by a corporate surety in accordance with Insurance Code 7.19-1. The bond shall be payable to the Board and in a form approved by the Board. Gov't Code 2253.021(a), (d)–(e)

For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract conditioned on the faithful performance of the work according to the plans, specifications, and contract documents. The bond is solely for the protection of a District. Gov't Code 2253.021(b).

For a contract in excess of \$25,000, a payment bond shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. Gov't Code 2253.021(c)

The selected firm will be required to comply with all bonding requirements.

3.03 Procurement Process and Scoring

Phase 1 RFQ for all interested Design/Build Firms.

The RFQ is the first step in a multi-step process aimed at identifying one or more qualified Respondents. In Phase 1, Owner will evaluate each Respondent on its experience, technical competence, capability to perform, and past performance, and based on the following weighted criteria.

Criteria	Available Points
1. Respondent's (and team's) Experience	20 points
2. Respondent's (and team's) Technical competence	20 points
3. Respondent's (and team's) Capability to perform	35 points
4. Respondent's (and team's) past performance	25 points
TOTAL	100 points

Cost-related or price-related evaluation factors are NOT permitted during Phase 1 and should NOT be included in any response.

Each Firm is required to certify to Owner that each Architect or Engineer that is a member of the firm/team was selected based on demonstrated competence and qualifications in a manner provided by Texas Government Code 2254.004.

Phase 2 Request for Proposal from short-listed Respondents

A committee will be formed to review responses submitted. Based on the selection criteria and weight described above, the committee may short-list a maximum of five (5) of the most qualified Respondents, who will be invited to submit proposals.

Owner, at its discretion, retains the right to select only one (1) Respondent at this stage and negotiate a contract. Owner may also determine that no qualified responses have been received and reject all responses.

A short-list of Respondents will be selected, who may submit a Proposal for the project, which will be reviewed by the Owner. The Owner, as its option may request an interview with the short-listed Respondents. Proposals will be reviewed, evaluated and ranked on the following criteria and weighted values:

Criteria	Available Points
1. Price	25 points
2. Reputation and experience of Respondent	15 points
3. Quality of goods and services of Respondent	15 points
4. Past relationship with owner	15 points
5. Safety record of Respondent	10 points
6. Financial capacity appropriate to scope of project	5 points
7. Other relevant factors:	
a. Ability to complete on time	5 points
b. Long term cost to owner to acquire Respondent's goods and services	5 points
c. Respondents' proposed personnel	5 points
TOTAL	100 points

****NOTE* Only those short-listed Respondents shall be invited to submit a proposal. No proposal shall be submitted during Phase 1.***

Oral Presentation (Owner's Option)

Oral presentations may be required of each of the interested short-listed Respondents covering any unique qualities, methodologies, or approaches taken to differentiate from other Respondents. Short-listed Respondent's may be asked to provide additional information to the Owner regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the Project, the feasibility of implementing the Project as proposed, the ability to meet schedules, costing methodology, or other factors as appropriate. This additional information will be used with prior information received in further evaluating the short-listed Respondents on the criteria set forth above to determine a rank-order of the short-listed firms.

Negotiate Project Development Agreement

Owner shall select the design-build firm that submits the response offering the best value for the District on the basis of the published selection criteria and its ranking evaluations with whom it will enter into negotiations. It is anticipated that negotiations would encompass all phases of work, including but not limited to: architect and engineering fees, preconstruction services, labor rates,

contingency/risk, insurance and bonds, markups for overhead and profit on subcontractors, as well as any other items Owner feels are appropriate. If negotiations are successful, Owner and the highest ranking Respondent will enter into an agreement as identified in this RFQ. If an acceptable agreement cannot be reached between the Owner and the highest-ranking Respondent, the Owner may choose to end negotiations with the highest ranking Respondent and negotiate with the next highest ranked Respondent.

Project Development

The selected Respondent will develop the Project proposal(s) based on the Scope of Work/Design Criteria Package outlined in Section 2. Owner expects the Respondent to complete the Project development on a contingent basis (*i.e.*, not bill for the development until completed and the implementation is funded) and roll the agreed upon cost of the development into the implementation cost. Owner reserves the right to pay for the development separately. At the conclusion of Project Development, Respondent will provide Owner with a Guaranteed Maximum Price (GMP) for the agreed upon scope of work.

Project Implementation

After finalizing work scope and GMP, the Respondent will provide turnkey design and construction management services.

3.04 Instructions to Respondents

1. Public Information

All information, documentation, and other materials submitted in response to this RFQ 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 RFQ information.

2. Type of Contract

Any contract resulting from this RFQ will be in the form that meets any and all requirements of the final financing options and/or statutory requirements related to Project approval criteria including, but not limited to:

- Payment and performance bonds for the total amount of the Project Budget, less design fees, as set out in Texas Government Code §2253 and 2269.311;
- The insurance noted herein, and as stated in Attachments J & L;
- Prevailing wage rates as set out in Texas Government Code §2258;
 - Owner, for the purpose of complying with §2258, Subchapter B of the Texas Government Code for all public contracts, has adopted the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as the published rates for the District. These rates are listed on the following website: www.beta.sam.gov.
 - It is the responsibility of the Respondent to pay the appropriate rate or higher on the construction project or be subject to penalty as set forth in §2258.023 of the Texas General Government Code; and
 - The Prompt Payment Act, as set out in Texas Government Code §2251.

3. Clarifications and Interpretations

Any clarifications or interpretations of this RFQ that materially affect or change its requirements will be included in an addendum and issued to each known potential Respondent. It is the responsibility of all Respondents to obtain this information in a timely

manner. All such addenda issued by the Owner before responses are due shall become a part of the RFQ, and Respondents shall acknowledge receipt of and incorporate each addendum in its response. Respondents shall consider only those clarifications and interpretations that the Owner 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 Owner and should not be relied on when preparing responses to the RFQ.

4. Deadline

Owner will receive Responses to this RFQ at the time described below:

March 11, 2026 @ 1:00 p.m., LOCAL TIME

Submit one (1) original, two (2) identical copies, and one (1) electronic copy on a USB drive of the response to:

**Silverton ISD
ATTN: Michelle Francis, Superintendent
Mailing Address: PO Box 608, Silverton, TX 79257
Hand Delivery: 700 Loretta St., Silverton, TX 79257**

Late received responses will be returned to the Respondent unopened.

5. Delivery and Submission

The Owner will NOT acknowledge or receive responses that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).

Properly submitted responses will not be returned to Respondents.

Response materials must be enclosed in an opaque, sealed envelope (box or container); the package must clearly identify the submittal deadline, the RFQ title, and the name and return address of the Respondent.

6. Point of Contact

Owner designates the following person as its representative and Point-of-Contact for this RFQ. Respondents shall restrict all contact with the Owner and direct all questions regarding this RFQ to the Point-of-Contact person.

Michelle Francis, Superintendent
Mailing Address: PO Box 608, Silverton, TX 79257
Hand Delivery: 700 Loretta St., Silverton TX 79257
Phone: (806) 639-6300
Email: michelle.francis@silvertonisd.net

7. Evaluation of Qualifications

The evaluation of responses shall be based on the requirements described in this RFQ. All properly submitted responses will be reviewed, evaluated, and ranked by the Owner. **Responses for Phase 1 of this RFQ shall NOT include Respondent's fees, pricing, or other compensation.**

8. Owner's Reservation of Rights

OWNER MAKES NO REPRESENTATIONS OF ANY KIND THAT AN AWARD WILL BE MADE AS A RESULT OF THIS RFQ AND NO SUCH REPRESENTATION IS INTENDED OR SHOULD BE CONSTRUED BY THE ISSUANCE OF THIS RFQ. THE OWNER RESERVES THE RIGHT TO REJECT ANY AND ALL RESPONSES OF BOTH PHASE 1 AND PHASE 2 AND RE-SOLICIT FOR NEW RESPONSES, OR TO REJECT ANY AND ALL RESPONSES AND TEMPORARILY OR PERMANENTLY ABANDON THE PROJECT. THE OWNER RESERVES THE RIGHT TO WAIVE ANY FORMALITIES OR MINOR TECHNICAL INCONSISTENCIES, OR DELETE ANY ITEM/REQUIREMENTS FROM THIS RFQ WHEN DEEMED TO BE IN OWNER'S BEST INTEREST.

9. Acceptance of Evaluation Methodology and Waiver of Claims

BY TENDERING A RESPONSE TO THIS RFQ, THE RESPONDENT ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REQUIREMENTS FOR SUBMITTING A RESPONSE, AND THE PROCESS USED BY THE OWNER FOR SELECTING THE HIGHEST AND BEST RESPONDER. FURTHER, BY SUBMITTING A RESPONSE, THE RESPONDENT FULLY, VOLUNTARILY AND UNDERSTANDINGLY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST OWNER OR ANY OF ITS TRUSTEES, OFFICERS, AGENTS AND/OR EMPLOYEES THAT COULD ARISE OUT OF THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY RESPONSE SUBMITTED IN RESPONSE TO THIS RFQ.

10. No Reimbursement for Costs

Respondent acknowledges and accepts that any costs incurred by the Respondent's participation in this RFQ shall be at the sole risk and responsibility of the Respondent.

11. No Israel Boycott Certification

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 Owner is \$100,000 or more, the Respondent represents and warrants to the Owner 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.

12. No Boycott Energy Companies Certification

Pursuant to Texas Government Code, Chapter 2276, 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.

13. No Discrimination of Firearm Entities Certification

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 earnings 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.

14. Companies Engaged In Business With Iran, Sudan, Or A Foreign Terrorist Organization

In accordance with Texas Government Code, Chapter 2252, Subchapter F, Owner 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 RFQ, Respondent certifies to Owner 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 Owner to believe that the Respondent was a listed company at the time of this procurement.

15. Not an Abortion Provider

Respondent must verify in any subsequent contract that it is not an abortion provider or an affiliate of abortion providers.

16. Conflict of Interest

Effective January 1, 2006, any person or entity, as well as agents of such persons, who contracts or seeks to contract with the Owner for the sale or purchase of property, goods, or services are required to file a Conflict of Interest Questionnaire with the Owner. A Conflict of Interest questionnaire and affidavit are included in this RFQ. The completed forms must be returned as part of your Response.

17. Certificate of Interested Parties

Effective January 1, 2016, Texas governmental entities must comply with the “Disclosure

of Interested Parties” 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, 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.

18. Sexual Misconduct with a Minor or Student

By submitting a response to this solicitation, respondent certifies and agrees that it shall not assist an employee, contractor or agent of the Company or of any other school district in obtaining a new job if the Consultant 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.

19. Social Transitioning Assistance

By submitting a response to this solicitation respondent represents and warrants that it shall ensure that all actions of respondent in specific performance of a contract awarded shall comply with federal and state law that there are only two sexes and respondent’s employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, assist a student with social transitioning. Social transitioning means a person’s transition from the person’s biological sex at birth to the opposite biological sex through the adoption of a different name, different pronouns, or the expressions of gender that deny or encourage a denial of the person’s biological sex at birth.

20. Gender Identity

By submitting a response to this solicitation, respondent represents and warrants that respondent’s employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, provide instruction, guidance, activities, or programing regarding sexual orientation and gender identity to students of the District.

21 Diversity, Equity and Inclusion

By submitting a response to this solicitation, respondent represents and warrants that the respondent’s employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, provide instruction, guidance, activities, or programing regarding diversity, equity, and inclusion, and shall not assign to another individual diversity, equity, and inclusion duties.

22. Prohibited Instruction/Guidance

By submitting a response to this solicitation, respondent represents and warrants that respondent’s employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, provide instruction, guidance, activities, or programing that is prohibited by Texas Education Code §28.022(a)(4).

23. Preservation And Disclosure Of Contract Documents

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.

3.05 Clarifying Qualification During Evaluation

During the evaluation process, the District has the right to require any clarification it needs in order to understand the Firm/Team's view and approach to the project and scope of the work. Any clarifications to the Qualification made before executing the contract will become part of the final Firm/Team contract.

3.06 Short List Ranking

After evaluating the responses to this RFQ, the District may rank up to 5 of the most highly qualified candidates to submit proposals and these Short-listed Teams may be asked to interview to help determine final ranking.

3.07 Interviews of Short-listed Firms/Teams

Prior to ranking the short-listed Firms/Teams for final selection, the District may elect to interview those Firms/Teams. The purpose of this interview will be to meet the proposed Project team (if

applicable), become familiar with key personnel and/or with the selection strategy proposed by the submitter and to understand the Firm/Team's project approach and ability to meet stated objectives for the Project. Short Listed Firms/Teams should be prepared to discuss with specificity their capacity to conduct this work in compliance with the Project timeframe, budget and good-faith obligations. The District will notify each short-listed firm to schedule individual times for the interviews.

3.08 Design-Build Firm/Team Final Selection

After making final Team selection and taking into consideration quality, performance and the time specified in the Qualifications for performance of the contract the District will begin contract negotiations with the selected responsible, responsive Firm/Team. If successful, the Firm/Team and District will enter into a professional services contract for the work.

All Respondents are considered fully informed as to intentions of District regarding the timeframe to prepare and complete contract negotiations. Respondents should be prepared to provide a detailed, written Proposal to include scope of work, staffing plans, action plan, Schedule and fee proposal to District during negotiations.

The District may withdraw this RFQ, reject qualifications or any portion thereof at any time prior to an award, and is not required to furnish a statement of the reason why a particular qualification was not deemed to be the most advantageous to the District.

3.09 Compliance

The District expects to use a DBIA Document Nos. 530 Owner/Design-Builder Agreement and 535 Standard Form of General Conditions, as amended by Owner. **Time is of the essence. Only revisions necessary and applicable for this project will be made, material deviations to terms of this Agreement will not be considered by the District. A sample Agreement that the selected Firm/Team is expected to execute without material change is attached hereto as Exhibit "A."**

End of Section Three

SECTION FOUR
QUALIFICATIONS SUBMITTAL REQUIREMENTS AND FORMAT

4.01 General Instructions

Responses shall be prepared simply and economically, providing a straightforward, concise description of the Respondent's ability to meet the requirements of this RFQ. Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and an understanding of Owner's needs.

Respondents shall carefully read the information contained in this RFQ and submit a complete response to all requirements and questions as directed. Incomplete responses will be considered non-responsive and subject to rejection. Failure to comply with all requirements contained in this RFQ may result in the rejection of the response.

Responses shall consist of answers to questions identified in this RFQ, including all attachments hereto. It is not necessary to repeat the question in the response; however, it is essential to reference the question number with the corresponding answer. Responses that are qualified with conditional clauses, alterations, items not called for or irregularities of any kind are subject to rejection by the Owner, at its option.

4.02 Format

Page Size, Binding, Dividers, and Tabs

Responses shall be a MAXIMUM OF 50 PRINTED PAGES. The cover, table of contents, and divider sheets do not count as printed pages.

Responses shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral or coil bindings.

Additional attachments shall NOT be included with the response. Only the responses provided by the Respondent to the questions identified herein and in the oral interview, if any, will be used by the Owner for evaluation.

Separate and identify each criteria response by use of a divider sheet with an integral tab for ready reference.

Table of Contents

Responses shall include a "Table of Contents" and give page numbers for each part of the response.

Pagination

Number all pages of the response sequentially using Arabic numerals (1, 2, 3, etc.).

4.03 Criteria and Weights for Selection

The selection of Respondents shall be in accordance with Texas Government Code Chapter 2269, Subchapter G, as it currently exists or may hereafter be amended or replaced. In Phase 1, Owner or its representatives shall evaluate demonstrated competence, capability and qualifications of each response, based on the weighted criteria:

Criteria	Available Points
1. Respondent's (and team's) Experience	20 points
2. Respondent's (and team's) Technical competence	20 points
3. Respondent's (and team's) Capability to perform	35 points
4. Respondent's (and team's) past performance	25 points
TOTAL	100 points

Each response shall be ranked on the above criteria on a total point scale of 1 to 100 in light of the information requested below. The Owner may request proposals from up to as many as 5 of the highest ranked responses.

a. Required information for Phase 1

1. Unique Qualifications

Provide a statement of interest for the project including a narrative describing the Respondent's (and any subconsultant's) unique qualifications as they pertain to this particular project.

2. Corporate Qualifications

RFQ submittals are to include the information requested in this questionnaire in the sequence and format prescribed. Each selection criteria is associated with certain questions and will be evaluated based on this format. Failure to respond in this sequence and format will result in reduction of points or disqualification.

Supplemental materials providing additional information may be attached if limited to three (3) pages.

- a. Name of Firm:
Address of Principal Office: Telephone and Fax:
Form of Business Organization (corporation, partnership, individual, joint venture, other?): Year Founded:
Primary Individual to Contact:
- b. How many years has your organization been in business in its current capacity?
- c. How many years has your organization been in business under its present name? Under what other or former names has your organization operated?
- d. If your organization is a corporation, answer the following: date of incorporation, State of incorporation, president's name, vice president's name(s), secretary's name, treasurer's name.
- e. If your organization is a partnership, answer the following: date of organization formation, type of partnership (if applicable), name(s) of general partner(s).
- f. If your organization is individually owned, answer the following: date of organization formation, name of owner.
- g. If the form of your organization is other than those listed above, describe it and name the principals.
- h. Does your company principally work in the Texas Panhandle area?

- i. What is the dollar value of work done within a 100-mile radius of the District, for the three-year period of 2022-2025, and what percentage of your total work does this represent?
- j. (See Attachment B of this document.) In accordance with the Texas Education Code, Title 2, Public Education, Chapter 44, Fiscal Management, Subchapter B, Purchases; Contracts, Section 44.034:
 - A person or business entity that enters into a contract with a school district must give advance notice to the District if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

b. Personnel Qualifications

Provide information regarding capabilities and experience of personnel directly assigned to this project that include the following:

- a. Clearly identify who will have primary technical responsibility for architectural/engineering and design work, contract negotiations, construction management, training, and any other aspect of the project implementation or post-construction services. Please do not list individuals that will not be assigned to the project.
- b. List all current projects (and their respective locations) assigned to each individual on the team, with Client contact names and numbers for reference checks.
- c. Provide an organizational chart that clearly describes your firm’s project organization with supervisory reporting for this Project, along with each subconsultant and their area of responsibility.
- d. Professional resumes for key personnel and their responsibilities for the duration of the Contract. Resumes should include a list of previous projects, similar in size and complexity, in which the team member has played a significant role.

c. Program and Project Methodology

Describe your firm’s methodology for developing, designing and constructing projects of a similar size and scope as this Project. Address in detail the following key components, if provided by your firm or team, and how you would approach each one:

- Facility Surveys
- Project development
- Engineering and design
- Construction and project management
- Training
- Development and implementation of safety programs

d. References

Discuss your project team’s experience with implementing design build projects at similar facilities. List a three (3) to five (5) references indicating experience with facility improvements with owners of similar size and complexity. Include the following specific information for each project:

- Year project was completed
- Project title and location(s)
- Name, address, and phone number of owner’s representative
- Team member(s) involved and nature of team member’s responsibility
- General scope of work for the program
- Total dollar contract amount

Type of contract (guaranteed savings, shared savings, GMP, etc.)
Source(s) of project funding

e. Additional information for Phase 2 proposals, to be provided only if short listed by Owner

- a. Respondents are required to affirmatively demonstrate their responsibility by meeting the following minimum requirements:
1. have adequate financial resources;
 2. be able to comply with the required or proposed schedules;
 3. have a satisfactory record of performance;
 4. have a satisfactory record of integrity and ethics; and
 5. be otherwise qualified and eligible to receive an award.

The Owner may require other information sufficient to determine Respondent's ability to meet these minimum standards listed above.

- b. Owner may require additional information to establish responsibility of Respondent, such as: identification of proposed subcontractors, suppliers and/or other persons and/or organizations proposed for portions of the Project and substantial data to determine their qualifications and experience.
- c. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of Respondent, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Project in accordance with the RFQ Documents to Owner's satisfaction within the prescribed time.
- d. If the Contract is to be awarded, it will be awarded to the best-qualified Respondent whose evaluation, by Owner, indicates to be in the best interests of the Owner.
- e. Any and/or all/none of the proposed alternates may be considered in the evaluation. Owner may award Contract on base Proposal plus any and/or all/none of the alternates.
- f. Respondents shall provide its proposed fees for both design and construction services If invited to submit a proposal; FEES SHALL NOT BE DISCLOSED DURING PHASE 1.
- G. Owner anticipates selection within 30 days after Proposal opening, with contract negotiations to begin immediately thereafter.

*****End of Section Four*****

SECTION FIVE
ADDITIONAL REQUIREMENTS FOR SELECTED DESIGN/BUILD FIRM

1.01 General

1. Respondent shall keep the same project superintendent on the Project while work is going on.
2. Respondent shall work with the Owner to save costs during the design and construction phases.
3. Respondent agrees Owner may suspend or cancel the Project due to funding, budgetary or other reasons unknown at this time. Owner shall be obligated to pay the services rendered to date but is not obligated to proceed with the construction of the Project.
4. Fill out, complete and submit the "QUALIFICATIONS ACKNOWLEDGMENT FORM" at Appendix K.
5. Confirm in writing your company will comply and you will have your subcontractors comply with the "REQUIRED WORKER'S COMPENSATION COVERAGES" as outlined in Appendix L.
6. Fill out, complete and submit the "CONFLICT OF INTEREST QUESTIONNAIRE" at Appendix C and Appendix D.
7. Provide Professional Liability Insurance information stating the Architect/Engineer design team carries and maintains errors and omissions insurance in the amount of \$1,000,000.
8. The successful Respondent shall comply with all the requirements for Design-Build Contracts as noted in the Texas Government Code 2269, Subchapter G.
9. **The successful Respondent shall, upon approval of the contract, provide a Scope to Budget Estimate based on the Scope of Work/Design Criteria Package. If the Scope to Budget Estimate is more than the District's Estimated Project Budget as stated in this RFQ, before moving further into the Project, Respondent shall work with the Owner to "Value Engineer" the Project and scope to bring the Project within a budget acceptable to the Owner. Upon approval of the revised Scope to the Estimated Project Budget, the Project shall proceed forward into design by the architect/engineer team. If an acceptable construction cost is not reached, Owner has the right to cancel the Project.**
10. Owner prefers Respondent to consider local subcontractors in the bid process.

SECTION SIX
APPENDICES, SUBMITTALS FORMS AND INFORMATION

- 6.01 Appendix A - Costing Methodology**
- 6.02 Appendix B – Felony Conviction Disclosure Statement**
- 6.03 Appendix C - Non-collusion Affidavit**
- 6.04 Appendix D - Conflict of Interest Notice**
- 6.05 Appendix E - Suspension and Debarment Certification**
- 6.06 Appendix F - Certification of Residency**
- 6.07 Appendix G – Verification of Compliance with State and Federal Laws**
- 6.08 Appendix H - W-9 Request for Taxpayer Identification and Certificate**
- 6.09 Appendix I - Deviations/Signature Page**
- 6.10 Appendix J - Insurance Declaration Statement**
- 6.11 Appendix K - Qualifications Acknowledgement Form**
- 6.12 Appendix L - Required Workers' Compensation Coverages**
- 6.13 Appendix M – Proposal Form**
- 6.14 Exhibit A – SAMPLE Agreement and General Conditions**
- 6.15 Exhibit B – Design Criteria Package**

APPENDIX A

Costing Methodology

Only to be completed by short-listed Respondents upon request

Include a description of the following costs for each category based on the size and scope of the project. The discussion of fees and total cost for performing the Work will be limited to the Final Selection Process, after firms have been ranked.

Subcontractor markup,

Definition of general conditions,

Range of cost for general conditions,

Policies on retainage,

Policies on contingencies,

Discount for prompt payment,

Expected staffing for administrative duties.

Do not include a guaranteed maximum price or bid for overall design or construction in this section.

APPENDIX B

Felony Conviction Disclosure Statement

Section 44.034, Texas Education Code, Notification of Criminal History, Subsection (a), states “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator has been convicted of a felony. A 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 conviction for the Respondent, its agents, servants, or employees has been reviewed by me and the following information furnished is true to the best of my knowledge.

SILVERTON INDEPENDENT SCHOOL DISTRICT

FELONY CONVICTION NOTICE

In accordance with the above-described statutory provisions, 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 furnished information is true to the best of my knowledge.

VENDOR: _____

AUTHORIZED COMPANY OFFICIAL: _____
(print name)

Choose the following, as applicable:

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

SIGNATURE OF COMPANY OFFICIAL: _____

OR

- B. My firm is not owned nor operated by anyone who has been convicted of a felony.

SIGNATURE OF COMPANY OFFICIAL: _____

OR

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

NAME OF FELON (S): _____

DETAILS OF CONVICTION(S): _____

SIGNATURE OF COMPANY OFFICIAL: _____

APPENDIX C

AFFIDAVIT OF NON-COLLUSION, NON-CONFLICT OF INTEREST, ANTI-LOBBYING

By submission of this response, the undersigned certifies that:

1. Neither the Respondent nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, has in any way colluded, conspired, or agreed, directly or indirectly with any person, firm, corporation or other Respondent or potential Respondent or given any money or other valuable consideration for assistance in procuring or attempting to procure a contract or fix the prices in the attached response or the response of any other Respondent, and further states that no such money or other reward will be hereinafter paid.
2. No attempt has been or will be made by this firm's officers, employees, or agents to lobby, directly or indirectly, the District's Board of Trustees between response submission date and award by the District's Board of Trustees.
3. No officer, or stockholder of Respondent is a member of the staff, or related to any employee of the Silverton Independent School District except as noted below:

The undersigned certifies that he/she is fully informed regarding the accuracy of the statements contained in this certification, and that the penalties herein are applicable to the Respondent as well as to any person signing on its behalf.

Signature of Authorized Official: _____

Printed Name: _____

Title: _____

Date: _____

APPENDIX D

CONFLICT OF INTEREST NOTICE

Silverton Independent School District Notice to Vendors Conflict of Interest Questionnaire Required by Chapter 176 of the Texas Local Government Code

A person or entity who contracts or seeks to contract with Silverton ISD for the sale or purchase of property, goods, or services (as well as agents of such persons) are required to file a Conflict of Interest Questionnaire with the District's Records Administrator. Each covered person or entity who seeks to or who contracts with Silverton ISD is responsible for complying with any applicable disclosure requirements.

The Conflict of Interest Questionnaire must be filed not later than the seventh business day after the later of:

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

The Vendor shall file an updated completed questionnaire with the appropriate records administrator not later than September 1 of the year in which an activity described in Section 176.006(a), Local Government Code, is pending, and not later than the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.

Note: A Vendor is not required to file an updated completed questionnaire in a year if the person has filed a questionnaire on or after June 1, but before September 1, of that year.

The Conflict of Interest Questionnaire may be downloaded from the Texas Ethics Commission's website at <https://www.ethics.state.tx.us/forms/CIQ.pdf>. You may also use the copy provided. See Attachment D-1.

Attachment D-1

Conflict of Interest Questionnaire

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</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>	OFFICE USE ONLY	
1	Name of vendor who has a business relationship with local governmental entity.	Date Received
2	<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.)	
3	Name of local government officer about whom the information is being disclosed. _____ Name of Officer	
4	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. 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? <input type="checkbox"/> Yes <input type="checkbox"/> No 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
5	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.	
6	<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).	
7	_____ Signature of vendor doing business with the governmental entity	_____ Date

APPENDIX E

SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods and services equal to or in excess of \$100,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Firms receiving individual awards of \$100,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a federal agency.

Before an award of \$100,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a federal agency.

Name of Firm: _____

Signature of Authorized Official: _____

Printed Name: _____

Date Signed: _____

APPENDIX F

CERTIFICATION OF RESIDENCY

Chapter 2252 of the Texas Government Code relates to Resident versus Nonresident and the requirements governmental entities must follow when awarding contracts to Nonresidents. The pertinent portion of the Chapter is as follows:

2252.001. "Resident" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

"Nonresident" refers to a person who is not a resident.

"Governmental contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.

2252.002. A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in:

- (1) the state in which the nonresident's principal place of business is located; or
- (2) a state in which the nonresident is a resident manufacturer.

Please complete the appropriate statement below:

A. I certify that _____
is a Resident of Texas as defined in Chapter 2252.

B. I certify that _____
is a Nonresident of Texas as defined in Chapter 2252. Our principal place of business
is:

Signature: _____

Printed Name: _____ Date: _____

APPENDIX G

VERIFICATION OF COMPLIANCE WITH STATE AND FEDERAL LAWS

Certification of Eligibility

By submitting a statement of qualifications, 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, 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 Owner is \$100,000 or more, the Respondent represents and warrants to the Owner that the Respondent does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association⁴ 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, 2276, 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 Owner is \$100,000 or more, the Respondent represents and warrants to the Owner that the Respondent does not boycott energy companies⁵ 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 Owner is \$100,000 or more, the Respondent represents and warrants to the Owner that

⁴ 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.

⁵ "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.

the Respondent does not boycott⁶ Israel and will not boycott Israel during the term of any contract resulting from the solicitation.

Relating to State Contracts with and Investment in Companies that do Business with Iran, Sudan, or any known foreign terrorist organizations 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.

Not an Abortion Provider

Respondent must verify in any subsequent contract that it is not an abortion provider or an affiliate of abortion providers.

Social Transitioning Assistance

By submitting a response to this solicitation respondent represents and warrants that it shall ensure that all actions of respondent in specific performance of a contract awarded shall comply with federal and state law that there are only two sexes and respondent’s employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, assist a student with social transitioning. Social transitioning means a person’s transition from the person’s biological sex at birth to the opposite biological sex through the adoption of a different name, different pronouns, or the expressions of gender that deny or encourage a denial of the person’s biological sex at birth.

Gender Identity

By submitting a response to this solicitation, respondent represents and warrants that respondent’s employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, provide instruction, guidance, activities, or programing regarding sexual orientation and gender identity to students of the District.

Diversity, Equity and Inclusion

By submitting a response to this solicitation, respondent represents and warrants that the respondent’s employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, provide instruction, guidance, activities, or programing regarding diversity, equity, and inclusion, and shall not assign to another individual diversity, equity, and inclusion duties.

Prohibited Instruction/Guidance

By submitting a response to this solicitation, respondent represents and warrants that respondent’s employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, provide instruction, guidance, activities, or programing that is prohibited by Texas Education Code §28.022(a)(4).

Certification of Compliance with Texas Family Code

As per Section 14.52 of the Texas Family Code, all Respondent must complete and submit with the proposal the certification 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.

⁶ “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.

Design Build Firm Name: _____

Signature: _____

Print Name: _____

Title _____

Date: _____

APPENDIX I

DEVIATIONS / SIGNATURE PAGE

In the event the undersigned Respondent intends to deviate from the general terms, conditions, or specifications listed within this submittal, all such deviations must be listed on this page, with complete and detailed conditions and information also being attached. In the absence of any deviation entry on this form, the Respondent assures the District of their compliance with the Terms, Conditions, Specifications, and information contained within this SUBMITTAL.

Deviations:

The District will be the sole judge to determine if deviations are acceptable in meeting the needs of the District and participating members.

The District reserves the right to withdraw this request for qualifications at any time and for any reason. The District also reserves the right to award or not award this contract in any manner deemed to be in the best interest of the District.

Please make sure that you provide the following forms (initial each response in the space provided):

- a. **Proof of Insurance** Yes _____ No _____
- b. **Felony Conviction Notice** Yes _____ No _____
- c. **Qualifications Form** Yes _____ No _____
- d. **Non-Collusion Affidavit** Yes _____ No _____
- e. **Suspension & Debarment** Yes _____ No _____
- f. **Certification of Residency** Yes _____ No _____
- g. **Conflict of Interest** Yes _____ No _____
- h. **Required Addenda** Yes _____ No _____
- i. **Compliance with state and federal laws** Yes _____ No _____

All Respondents MUST COMPLETE this page.

Sign and Return with response or your submission may be considered Non-Responsive.

Our response is submitted according to: _____ Deviations listed above
_____ No Deviations

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

APPENDIX J

Firm/Team shall maintain insurance not less than the following:

Firm/Team agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following coverage and limits. The requirements contained herein, as well as District's review or acceptance of insurance maintained by Firm/Team is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Firm/Team's under this Contract.

1. Firm's "Designer(s) of Record" MUST have a current Texas Architectural and/or Engineering license(s) as appropriate for their portion of the design work.
2. Firm's "Builder" MUST have a current Texas Contractor's license with an unlimited building classification.
3. Lead Design-Build firm MUST have bonding capacity to provide a Labor and Material Payment and Performance bonds with coverage each equal to the total cost of the project.
4. Lead Design-Build firm MUST be able to get a Builder's Risk Insurance Policy for this project with coverage equal to the total cost of the project.
5. Lead Design-Build firm MUST agree to keep and maintain insurance for the duration of this Agreement including but not limited to commercial general liability, automobile liability, workers' compensation, employer's liability, and umbrella coverage with at least the minimum limits shown below. The Contractor shall furnish the District with certificates of insurance for each type of insurance described herein. The District reserves the right to negotiate different limits and coverage in the final contract.)

Commercial General Liability:	\$1,000,000 per occurrence
Commercial Auto Liability:	\$1,000,000 combined single
limit Excess	
(Umbrella) Liability:	\$10,000,000
Workers' Compensation:	Statutory Benefit
Employer's Liability	\$1,000,000 per accident/ \$1,000,000 disease, policy limit \$1,000,000 disease, employee

Professional Liability (Errors & Omissions) coverage for Architect of Record and Engineer(s) of Record shall provide coverage not less than \$1 million per claim. (The District reserves the right to negotiate different limits and coverage in the final contract.)

All insurance companies must be authorized to do business in Texas.

Certificate of Insurance: Firm/Team agrees to provide the District with Certificates of

Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Firm/Team's insurer. If Firm/Team receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Firm/Team agrees to notify the District within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to the coverage no longer in compliance. Certificate Holder address should read:

Silverton Independent School
700 Loretta St. Street
Silverton, TX 79257

When a board makes a public work contract for constructing, altering, or repairing a public building or carrying out or completing any public work, it shall require the contractor, before beginning the work, to execute payment and/or performance bonds as specified below. The bonds shall be executed by a corporate surety in accordance with Insurance Code 7.19-1. The bond shall be payable to the board and in a form approved by the board. Gov't Code 2253.021(a), (d)–(e)

For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract conditioned on the faithful performance of the work according to the plans, specifications, and contract documents. The bond is solely for the protection of a district. Gov't Code 2253.021(b)

For a contract in excess of \$25,000, a payment bond shall be executed in the amount of the contract solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. Gov't Code 2253.021(c)

The selected firm will be required to comply with all bonding requirements.

Insurance and Bond Requirement Acknowledgement:

I understand the above requirements and agree to comply.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

APPENDIX K

Qualifications Acknowledgement Form

Submitted by: _____

Date: _____

Phone No: _____

To: Michelle Francis, Superintendent

By tendering this response, the undersigned acknowledges and agrees to the following:

1. Receipt of this Request for Statement of Qualifications, Appendices and Attachments.
2. To hold open this response for a period of 45 days following its submission.
3. To accept the right of the Owner to reject any and all responses to the Request for Statements of Qualifications, to waive formalities and to accept the response the Owner considers most advantageous.
4. To enter into a contract with the Owner for "design-build" services as included as SAMPLE document in the Request for Statement of Qualifications.
5. By signing, the undersigned affirms that, to the best of his knowledge, the response to the Request for Statement of Qualifications has been developed independently and is submitted without collusion with any other Respondent or with anyone that would serve to limit competition in the award of this contract.
6. Each architect/engineer of the team was selected on demonstrated competence and qualifications in a manner provided by Texas Government Code §2254.004.
7. BY TENDERING A RESPONSE TO THIS RFQ, THE RESPONDENT ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REQUIREMENTS FOR SUBMITTING A RESPONSE, AND THE PROCESS USED BY THE OWNER FOR SELECTING THE HIGHEST AND BEST RESPONDER. FURTHER, BY SUBMITTING A RESPONSE, THE RESPONDENT FULLY, VOLUNTARILY AND UNDERSTANDINGLY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST OWNER OR ANY OF ITS TRUSTEES, OFFICERS, AGENTS AND/OR EMPLOYEES THAT COULD ARISE OUT OF THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY RESPONSE SUBMITTED IN RESPONSE TO THIS RFQ.

Authorized Signature

Title

Name of Contracting Firm

Address

Telephone

Email

APPENDIX L

Required Workers' Compensation Coverages

REQUIRED WORKERS' COMPENSATION COVERAGES 28 TAC 110.110(c)(7), adopted to implement Texas Labor Code 406.096

The District shall use the following language for bid specifications and contracts for building or construction, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project is required for the duration of the project.

Duration of the project includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all employees of the contractor providing services on the project for the duration of the project.

The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

No later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

The contractor shall post on each project site a notice, in the text, form, and manner prescribed by the TDI, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the project for the duration of the project;

Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;

Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

Obtain from each other person with whom it contracts, and provide to the contractor:

A certificate of coverage, prior to the other person beginning work on the project; and

A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

Notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

Contractually require each person with whom it contracts to perform as required by items 1–6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate

insurance carrier or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

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

28 TAC 110.110(i)

APPENDIX M

PROPOSAL FORM*

***ONLY TO BE COMPLETED UPON REQUEST BY OWNER
BY SHORT-LISTED RESPONDENTS DURING PHASE 2**

SILVERTON INDEPENDENT SCHOOL DISTRICT

Submitted by: _____

Date: _____ Phone No.: _____

To: (mail or hand delivery)

Silverton Independent School District
Attn: Michelle Francis, Superintendent
Mailing Address: PO Box 608, Silverton, TX 79257
Hand Delivery: 700 Loretta St., Silverton TX 79257

Having examined the documents for RFQ 2026-02 prepared by Silverton Independent School District, dated October 12, 2023 and having examined site conditions, the undersigned proposes to perform all work as a design/build firm for the above-named Project(s). With an agreed upon GMP, the undersigned proposes to furnish all labor, equipment and materials to complete the above-named Project(s).

PROPOSED FEES

Based on your Firm's plan to complete this Project, indicate your proposed fees and prices for the Scope of Work for this Project. Base the computed fees below on the estimated construction budgets as stated in this Proposal.

Design Services _____ % (\$ _____)

Construction Services: _____ % (\$ _____)
(inclusive of all of mark up and profit)

General Conditions Cost Estimate: \$ _____

(itemize/attach list of categories) _____

Other Costs (if any specify below):

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

TOTAL \$ _____
(from all costs above)

ACKNOWLEDGEMENT OF PROPOSAL

Company Name: _____

Address: _____

Contact Person: _____

Office Phone: _____

Mobile Phone: _____

e-mail: _____

Fax: _____

It is understood that the Owner reserves the right to reject any or all Proposals, or waive any informalities in the Proposal process.

Authorized Signature

Title (Seal, if a Corporation)

State whether Corporation, Name of Contracting Firm
Partnership or Individual

Address

Telephone

THIS PROPOSAL FORM MUST BE SUBMITTED BY March 23, 2026 at 1:00 p.m.

EXHIBIT A

Sample Form of Agreement and General Conditions

(attached)

SILVERTON INDEPENDENT SCHOOL DISTRICT AND
DESIGN-BUILD AGREEMENT

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Exhibit A..... Project List/Design Criteria

SILVERTON INDEPENDENT SCHOOL DISTRICT AND
DESIGN-BUILD AGREEMENT

This **AGREEMENT** is by and between the following parties, for services in connection with the Program identified below:

OWNER: Silverton Independent School District
700 Loretta St.
Silverton, Texas 79257

Owner authorized representative is:
Michelle Frances, Superintendent or his successor

DESIGN-BUILDER: *Name and Address*

The Design/Builder's authorized representative is:

Phone number: (____) _____
Email: _____

The Design/Builder's architect of record is: *Name and Address*

License No. _____
Phone number: (____) _____
Email: _____

The Design/Builder's Project Architect is: Name and Address

License No. _____
Phone number: (____) _____
Email: _____

PROGRAM AND THE PROJECTS:

Design, construction, renovation and improvements to District facilities for the 2026 Bond Program Projects, including: renovations to: the football stadium/field, gym and other athletic facilities, and ag shop

DISTRICT INDEPENDENT ARCHITECT & REPRESENTATIVE

D. Scott Stark
1500 S. Taylor
Amarillo, TX 79101
Phone Number: (806) 342-9940
Email: scottstarkdesign@yahoo.com

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1
Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2
Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments (including any Guaranteed Maximum Price exhibits executed by the parties) and Change Orders to this Agreement issued in accordance with the General Conditions of Contract executed by Owner and Design-Builder;

2.2.2 Project Manuals developed by the Design-Builder and/or manufacturer's manuals, as necessary;

2.2.3 This Agreement, including all exhibits and appendices;

2.2.4 The General Conditions of Contract;

2.2.5 Construction Documents prepared and approved in accordance with Article 2 of the General Conditions of Contract;

2.2.6 Drawings and Specifications developed by the Owner's Independent Architect, if any;

2.2.7 The Owner's RFQ 2026-02, including all design and construction specifications, as set out in the Scope of Work/Design Criteria package included in the Owner's RFQ 2026-02;

2.2.8 Written requirements, information and addenda, if any, related to RFQ 2026-02;

2.2.9 Design-Builder's Statement of Qualifications and response to the RFQ 2026-02

2.2.10 Any other documents that may be specifically listed in this Agreement.

Article 3
Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in this Agreement and the General Conditions of Contract.

3.3 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

3.4 The Contract Documents may be amended or modified only in writing, signed by both parties. Unless specifically enumerated above, or otherwise specified in this Agreement, the Contract Documents do not include other documents.

Article 4
Ownership and Use of Work Product

4.1 Drawings, specifications and other documents furnished by the Design-Builder and its partners, agents, employees, subcontractors, consultants, project associates or others are instruments of service and shall remain their property whether the Project for which they are made is constructed or not. Owner shall be permitted to retain copies, including reproducible copies and CADD copies, of the drawings, specifications and other documents for information and reference in connection with Owner's use and occupancy of the Projects. Design-Builder and Project Architect hereby grant Owner an irrevocable, fully paid-up, perpetual license and right to use the drawings, specifications and other documents furnished, including the originals thereof, and the ideas and designs contained therein, for any purpose regardless of whether their services for the Projects are completed, modified or terminated. This license shall survive the termination of this Agreement. If this Agreement is terminated, Design-Builder and Project Architect hereby expressly consent to the employment by Owner of a substitute architect to complete the Design Services under this Agreement, with the substitute architect having all rights and privileges of the Design Builder and Project Architect.

4.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Projects is not to be construed as publication in derogation of the Project Architect's and Design-Builder's rights.

4.3 If Owner uses Design-Builder's or Project Architect's work product for a work other than a Project anticipated by or inferable from this Agreement, Owner's use of the work product will be at Owner's sole risk without liability or exposure to Design-Builder or Project Architect.

Article 5 **Time**

5.1 Design Services, as they relate to the Program, shall continue or shall commence as soon as possible and shall be conducted and completed in compliance with the Program Schedule.

5.2 Construction Services shall commence when the Owner delivers a written Notice to Proceed to Design-Builder and all payment and performance bonds have been delivered and approved by Owner or Owner's Independent Architect. Construction Service shall be conducted and completed in compliance with the Program Schedule. Unless otherwise approved, the Owner and the Design-Builder shall perform their respective obligations under the Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

5.3 Time limits stated in the Contract Documents, including the Program Schedule, are of the essence of this Agreement. The Design-Builder shall be responsible for schedule development and reporting throughout the entire Project, including Design Services and Construction Services. If the Design-Builder anticipates that a time parameter in the Program Schedule will or may not be met, it shall notify the Owner as soon as possible, but in no event less than thirty (30) days prior to the scheduled time parameter that may not be met. Such notification shall identify the steps being taken by Design-Builder to meet other time parameters set out in the Program Schedule.

5.4 Unless specified in this section, the Substantial Completion of a Project shall be determined by the Owner and Design-Builder and shall be set forth in the Program Schedule. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Design-Builder will not materially interfere with or hamper Owner's normal school operations or other intended

use. As a further condition of a determination of Substantial Completion, the Design-Builder shall certify that all remaining Work shall be completed within 30 days. Design-Builder shall complete Owner's Substantial Completion Certificate.

5.5 For each calendar day a Project is not substantially completed, the amount of One Thousand Five Hundred Dollars per day per Project (\$1,500.00/day/project) will be deducted from any money due or that becomes due Design-Builder, not as a penalty, but as liquidated damages representing the parties' estimate at the time of execution of this Agreement of the damages which the Owner will sustain for late completion. The parties hereto stipulate and agree that the ascertainment of actual damages would be impractical and unduly burdensome and cause unnecessary delay and that, therefore, the amount of daily-liquidated damages set forth is reasonable.

5.6 Timely Final Completion is an essential condition of this Agreement. Design-Builder agrees to achieve Final Completion of a Project within 30 days of the designated date or extended date of Substantial Completion. Owner and Design-Builder agree that should Design-Builder fail to achieve Final Completion of a Project by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Design-Builder and Owner agree that the amount of liquidated damages for each calendar day Final Completion for each Project is delayed beyond the date set for Final Completion shall be the sum of \$1,000.00 per day if such failure to achieve Final Completion occurs during the school year. Design-Builder and Owner further agree that the amount of liquidated damages for each calendar day Final Completion for each Project is delayed beyond the date set for Final Completion shall be the sum of \$500.00 per day if such failure to achieve Final Completion occurs between school years. Owner may deduct such specified per day amount for failure to achieve Substantial Completion or Final Completions, as applicable, from the Final Payment made to Design-Builder, or, if sufficient funds are not available, then Design-Builder shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work, not as a penalty but as liquidated damages representing the parties' estimate at the time of execution of this Agreement of the damages which the Owner will sustain for late completion. The parties hereto stipulate and agree that the ascertainment of actual damages would be impractical and unduly burdensome, and cause unnecessary delay and that; therefore, the amount of daily-liquidated damages set forth is reasonable.

5.7 If Design-Builder cannot reasonably achieve a scheduled Substantial Completion Date or Final Completion Date with respect to a Project because of a failure by Owner to complete an obligation of Owner by the date completion of such obligation is scheduled under the Program Schedule, the assessment of liquidated damages under this Article shall be abated for a period of time equal to the period by which the Substantial Completion Date or Final Completion Date is delayed as a direct result of Owner's failure to complete its obligation. Design-Builder shall advise Owner in writing, as soon as reasonably possible, of Owner's specific failures that may delay the Substantial Completion Date of Final Completion Date for a Project.

5.8 The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.8.1 Owner shall have a minimum of _____ days of receipt by Owner to review all Design Submissions, the Project Schedule and any updates thereto.

5.8.2 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule and any updates thereto within _____ days of receipt by Owner.

Article 6 **Contract Price**

6.1 Owner will pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price (“Contract Price”) equal to the total of (i) the Earned Design-Services Fee (ii) the Reimbursable Expenses, (iii) the Cost of the Work and the Earned Construction Administration Fee subject to any Guaranteed Maximum Price (“GMP”) Agreement under Section 8 hereof and (iv) any adjustments made in accordance with the General Conditions of Contract.

6.2 The Design-Services Fee shall be a fee in the amount of _____ Dollars (\$ _____) [or _____ % of the Cost of the Work, not to exceed \$ _____]. The Design-Services Fee is a fee for all Design Services performable under this Agreement and specifically includes construction phase fees.

6.3 The Construction Administration Fee shall be a fee in the amount of _____ Dollars (\$ _____) or _____ %, of the Cost of the Work, not to exceed \$ _____).

6.4 If the Owner requests additional services which the Design-Builder believes were not contemplated by Owner’s Request for Qualifications (“Additional Services”), Design-Builder shall identify the requested Additional Services as soon as possible and shall confirm the requested Additional Services in writing at the earliest possible meeting between Owner’s Representative and Design-Builder’s Representative. Prior to the delivery of any Additional Services, the Owner and Design-Builder shall agree to the compensation for any Additional Services to be rendered by Design-Builder.

6.5 For any Reimbursable Expenses that are approved in advance by the Owner, Design-Builder shall be compensated for the actual amount expended, without any mark-up.

Article 7 **Cost Of The Work**

7.1 The term Cost of the Work means costs which the Design-Builder actually and necessarily incurs constructing the Work in strict compliance with the Contract

Documents. Cost of the Work includes only the items set forth in this Article and does not include any Design Services Fees.

7.2 References in the General Conditions of Contract to adjustments in “cost” or “costs” refer to the Cost of the Work.

7.3 Cost of the Work includes:

7.3.1 Labor and Administrative:

7.3.1.1 Reasonable and customary wages to construction workers directly employed by Design-Builder who perform Work at the Site.

7.3.1.2 Reasonable and customary wages or salaries approved by the Owner and paid to the Job Superintendent(s) when and to the extent such employe(s) are directly associated with the Owner’s Program.

7.3.1.3 Costs paid or incurred by Design-Builder for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii) or otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.

7.3.1.4 Costs of postage, package delivery and courier service, and reasonable and customary petty cash expenses of Design-Builder’s jobsite offices, incurred directly and solely in support of the Work, and all incurred at a site.

7.3.2 Materials, Equipment, Tools, Rentals:

7.3.2.1 Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. Owner shall be entitled to take possession of excess materials not incorporated into the Work, or at Owner’s option, Design-Builder shall sell such materials and deduct the gross proceeds from the Cost of the Work. Payment for stored materials is subject to the General Conditions of Contract.

7.3.2.2 Costs of materials, supplies, temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Design-Builder, if such items are fully consumed in the construction of the Work, and Owner approves such purchase in advance in writing. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.

7.3.2.3 Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by Design-Builder, and may include transportation, installation, and minor maintenance costs, and removal, all so long as Owner has approved such items and the rental rates in advance in writing. If tools, machinery or construction equipment are rented from the Design-Builder,

the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be at 90% of market rental rate in the locality for similar equipment for such temporary facilities, equipment, and hand tools and must be approved by the Owner before commitments are made. In no event shall the aggregate rental cost to Owner exceed the purchase price and maintenance cost of the item. In the event equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, Design-Builder shall purchase such equipment and turn it over to Owner upon final completion of the Work, or, at Owner's option, credit to the Owner with the amount of the fair market resale value.

7.3.2.4 Site debris removal and disposal costs which shall be done in accordance with all applicable laws and regulations.

7.3.3 Subcontracts: Payments made to Subcontractors by Design-Builder for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such Subcontractors.

7.3.4 Other costs:

7.3.4.1 Governmental sales and use taxes directly attributable to the Work. Owner is a political subdivision of the State of Texas and Design-Builder shall avail itself of all exemptions which may exist for such taxes based on Owner's status.

7.3.4.2 Permit and inspection fees, except to the extent that Owner is exempt from such fees.

7.3.4.3 Premiums for insurance and bonds to the extent directly attributable to this Agreement.

7.3.4.4 Testing fees pursuant to the General Conditions of Contract.

7.3.4.5 Intellectual property royalties and licenses for items specifically required by the Contract Documents, which are, or will be, incorporated into the Work.

7.3.4.6 Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of Design-Builder.

7.3.4.7 Other costs approved in advance in writing by Owner at Owner's sole option and discretion.

7.4 Costs Not Included in the Cost of the Work. The following shall not be included in the Cost of Work to be paid by Owner:

7.4.1 Costs associated with the failure to perform of any Subcontractor or the bankruptcy or insolvency of any Subcontractor.

7.4.2 Legal and administrative costs to review and negotiate Contract Documents.

7.4.3 Travel of Design-Builder, its officers or employees incurred while traveling between a Project and Design-Builder's principal or branch offices.

7.4.4 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Design-Builder.

7.4.5 Costs incurred by Design-Builder resulting from the failure of Design-Builder or its Subcontractors to coordinate their work with that of Owner and its contractors, if any, after agreeing to the schedules therefor, or failure of Design-Builder to comply with directives of Owner not in conflict with said schedules.

7.4.6 Costs resulting from the failure of Design-Builder or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

7.4.7 Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel specifically provided herein.

7.4.8 Any and all overhead expense, or office expense at any location, except site office expense to the extent specifically included herein.

7.4.9 Costs related to Design-Builder's indemnification obligations under this Agreement.

7.4.10 The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Program or a Project.

7.4.11 Any cost arising out of a breach of this Agreement or the fault or negligence of Design-Builder, its Subcontractors, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected, or nonconforming work, materials or equipment, damage to persons or property, errors and omissions with respect to design services provided or furnished by Design-Builder, and failure to coordinate the design services provided or furnished by Design-Builder.

7.4.12 Liquidated or actual damages imposed by Owner for failure of Design-Builder to complete a Project within the Contract Time.

7.4.13 Any cost arising out of the failure of Design-Builder to complete the Drawings and Specifications in a timely manner.

7.4.14 Costs of Design-Builder's architects, engineers, and other entities and personnel performing Design Services.

7.4.15 Any and all costs not specifically authorized herein, including, without limitation, the then-current or Final GMP any cost which would cause the GMP to be exceeded.

7.5 Discounts, Rebates and Refunds. The Cost of the Work to be paid by Owner shall be credited with the following items:

7.5.1 Proceeds of the sale of all tools, surplus materials, construction equipment, and temporary structures which have been charged to the Work other than by way of rental, and remaining after completion, whether such sale is made to the Owner, the Design-Builder, or to some other party; and any such sale, if made to others than the Owner, shall be at fair market price. Upon completion of the Work or when no longer required, all tools, construction equipment and materials purchased for the Work shall be sold and the Design-Builder shall use its best efforts to obtain the highest price in respect of such sales.

7.5.2 If Owner makes funds available to Design-Builder, discounts earned by the Design-Builder through advance or prompt payments. The Design-Builder shall obtain all possible trade and time discounts on bills for material furnished, and shall pay said bills within the highest discount periods. The Design-Builder shall purchase materials for the Program in such quantities as will provide the most advantageous prices to the Owner.

7.5.3 Reasonable market value as approved by the Owner at the time of removal of all materials, tools, and equipment actually purchased for the work and upon completion of the work retained by the Design-Builder.

7.5.4 Rebates, discounts, or commissions allowed to and collected by the Design-Builder from suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, or on bond premiums, or insurance and sales taxes.

7.5.5 Design-Builder shall reimburse Owner for deposits made by Owner and not returned to Owner due to the fault of the Design-Builder. Should Design-Builder not promptly so reimburse Owner upon demand, Owner shall be entitled to recover said amount from Design-Builder, including, but not limited to, by deducting the amount from payments due the Design-Builder.

Article 8

Project Guaranteed Maximum Price Proposal

8.1 Design-Builder shall prepare and submit a Project GMP Proposal to Owner relating to each Project in the Program. The Program Schedule shall identify the dates for Project GMP Proposals on all Projects.

8.2 Each Project GMP Proposal must include, without limitation, a breakdown of Design-Builder's estimated costs organized by trade; allowance amounts by item; general conditions, contingency amounts; the portion of the Construction Administration Fee allocated to the Project or Projects subject to the Project GMP Proposal, a Contract Time,

a Substantial Completion Date, and other items customarily included for the Project GMP or other items reasonably requested by the Owner or Program Manager.

8.3 The Design-Builder shall review its development of a Project GMP Proposal with the Owner and Independent Representative on an ongoing basis to address all relevant issues including clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters reasonably requested by Owner. Without limitation, the Design-Builder shall provide written status reports of the Project GMP Proposal at the bi-weekly status meetings.

8.4 A Project GMP Proposal must identify the Drawings, Specifications and other construction documents relied on, the addenda incorporated, any exceptions to the General Conditions of Contract, the allowances, and all clarifications and assumptions made by the Design-Builder due to the incompleteness of the Drawings and Specifications. The GMP Proposal shall include all items requested in the GMP Proposal to Design-Builder by the Owner or Independent Representative.

8.5 In formulating a Project GMP Proposal, Design-Builder shall allow for the continued development and completion of the Drawings and Specifications which are reasonably inferable, except for material changes in scope, and a Project GMP Proposal shall include a Design-Builder's design contingency ("Design Contingency") to allow for additional costs of the Work arising out of such development and completion, as well as bidding variations and price escalations which do not qualify for a change order. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown as part of a Project GMP Proposal.

8.6 Before final acceptance of all or part of a Project GMP Proposal by the Owner, Design-Builder shall submit for Owner's approval a bound set of the drawings, specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents so as to fully describe the Project as developed at the time of the Project GMP Proposal (the "GMP Contract Documents"). The GMP Contract Documents shall be fully representative of and incorporated into any Project GMP Proposal.

8.7 Any Project GMP Proposal and GMP Contract Documents are intended to address all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the specified portion of the Project Work for the Project GMP. Any Project GMP Proposal and Contract Documents are complementary and what is required by one shall be binding as if required by all. If there is an irreconcilable conflict between or among the various documents that make up a Project GMP Proposal and the Contract Documents, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

8.8 Any Project GMP Proposal shall adopt and incorporate all of the terms and conditions of this Agreement and all other documents that comprise the Contract between the Owner

and the Design-Builder. Any exceptions to or modifications of such terms and conditions proposed by the Design-Builder in the Project GMP Proposal shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by the Owner.

8.9 Owner may accept or reject all or part of a Project GMP Proposal or attempt to negotiate its terms with Design-Builder (with the right to cease negotiations at any time and reject the Proposal) or Owner may increase estimated project budget. If the Owner accepts all or part of a Project GMP Proposal in writing, both parties shall execute a GMP Addendum. The GMP Addendum shall:

8.9.1 incorporate the terms of the Project GMP Proposal including the GMP;

8.9.2 set out the then-current Program GMP or the Final Program GMP with a breakdown to show each Project GMP that has been accepted by Owner. The then-current or Final Program GMP shall include all Projects contemplated by this Agreement in which a Notice to Proceed is issued.

If Owner accepts part of the GMP Proposal, the parties may continue negotiations for the Projects that are not part of the accepted GMP Proposal.

8.10 Following Owner acceptance of a Project GMP Proposal, and execution of a GMP Addendum, Design-Builder shall be responsible for developing the Construction Documents so that, when complete, the documents incorporate and address all qualifications, assumptions, clarifications, exclusions and value engineering issues contained in such Project GMP Proposal. The Design-Builder shall jointly provide monthly status reports on the progress of incorporation of all such qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the Project GMP Proposal.

8.11 The Design-Builder shall not be entitled to an increase in a Project GMP or the Program GMP due to the absence of any detail or specification the Design-Builder may require or for any construction which may be found necessary as the Work progresses in order to complete the construction of the Project. If an item or system is either shown or specified, all material and equipment required for the proper installation of such item or system and needed to make a complete operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner. Design-Builder is responsible for all design, including incidental designing/detailing as required by the Specifications for shop drawing purposes, except for design provided by Owner's Independent Representative, if any.

8.12 The Contingency for any Project is to be used to fund increases in the Cost of the Work identified through the refinement and development of the Construction Documents relating to the clarification, assumption and allowance issues specifically identified in the Project GMP Proposal, which are approved by the Owner. The Contingency is specifically not to be used for Contractor rework of the Construction Documents or the Work itself, or

for cost increases caused by lack of coordination or communication with design consultants or trade subcontractors, or to correct errors or omissions in the Construction Documents. Re-allocation of Contingency funds for any Project to any other line item or to another Project requires Owner approval, such approval not to be unreasonably withheld.

8.13 Prior to utilization of any Contingency, the Design-Builder shall provide complete documentation, to the Owner's satisfaction, describing in detail the scope of work affected and the associated costs. Use of the Contingency must be approved in advance and in writing by the Owner, such approval not to be unreasonably withheld.

8.14 If Design-Builder completes a Project for less than the Program GMP, Design-Builder may utilize such savings on one or more subsequent Projects if cost increases, rework of construction documents or the Work itself, or similar factors cause such subsequent Projects to exceed the applicable Project GMP.

Article 9 **Design-Builder Construction Services**

9.1 The Construction Phase shall be deemed to commence upon the earlier of (i) the date specified in a Notice to Proceed issued by Owner after the execution of a GMP Addendum, (ii) the issuance of a purchase order by Design-Builder for materials or equipment for a Project after prior written authorization by Owner, or (iii) award of a Subcontract in accordance with the requirements of this Contract after prior written authorization by Owner, and all payment and performance bonds have been submitted to Owner in accordance with the Contract Documents. Design Phase Services may overlap Construction Phase Services.

9.2 Design-Builder shall designate in writing a representative who is responsible for the day-to-day management of the Construction Services. The designated representative shall be the Owner's primary contact during the construction phase and shall be available as required for the benefit of the Program and the Owner. The designated representative shall be authorized to act on behalf of and bind the Design-Builder in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment. The designated representative shall not be changed without advance written approval from the Owner, which approval shall not be unreasonably withheld.

9.3 Unless otherwise provided for in this Agreement, Design-Builder shall provide or cause to be provided and shall pay for all design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary or reasonably inferable for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.

9.4 The Design-Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

9.5 The Design-Builder shall revise or change the Program Schedule only after consultation with the Owner and Owner's Independent Representative and with the Owner's written approval. This schedule shall indicate the dates for the start and completion of the various stages of construction, including dates when information and approvals are required from the Owner.

9.6 The Design-Builder warrants to the Owner that the materials and equipment provided under this Agreement will be of good quality and new, that the construction will be free from faults and defects and that the construction will conform with the requirements of this Agreement. The Design-Builder shall be responsible for correcting Work that does not comply with the Contract Documents.

9.7 Design-Builder is solely responsible for all safety precautions and programs in connection with the Work. Design-Builder shall review the safety programs developed by each Subcontractor and prepare and submit to Owner a comprehensive safety program. The comprehensive safety program shall comply with applicable requirements of the Occupational Safety and Health Act of 1970, all other applicable state, local, or federal laws or regulations, and with the requirements of an Owner-controlled insurance program, if any. Design-Builder shall ensure Subcontractor compliance with the requirements of the comprehensive safety program. The existence of any Owner-controlled insurance programs shall not operate to diminish or eliminate in any way Design-Builder's responsibilities under this paragraph.

9.8 The Design-Builder construction phase services and obligations are further described in the General Conditions of Contract.

Article 10

Design-Builder's Personnel and Subcontractors

10.1 Before entering into any subcontract agreements related to any Project, the Design-Builder shall identify in writing to the Owner its employees, personnel, and all other associated subconsultants to be assigned to the Project. Design-Builder shall not assign to the work or contract with any person or entity to which Owner has a reasonable objection. After approval by the Owner, Design-Builder shall not remove or replace the personnel and entities assigned to the Project except with the Owner's prior written consent which shall not be unreasonably withheld. Design-Builder shall promptly update the personnel list as required.

10.2 Except as expressly provided in this Agreement and except for services that are subject to Texas Government Code Chapter 2254, the Design-Builder shall solicit Competitive Sealed Proposals ("CSP") for each subcontracting and materials package issued for the Work and shall notify the Owner in advance in writing of the date it will

receive such CSPs. The CSPs shall be in a form that is acceptable to Owner. Based on the CSP's, Design-Builder shall identify the proposal that provides the best value for the District.

10.3 Design-Builder shall identify every Subcontractor it intends to use on the Project to the Owner for approval in writing at least ten (10) days before entering into any such subcontract. Design-Builder shall not use any Subcontractor to which Owner has a reasonable objection. Design-Builder shall not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner's approval of Design-Builder's Subcontractors, they shall not be changed without Owner's prior written consent, which shall not be unreasonably withheld. Design-Builder shall not incur any Subcontract costs prior to issuance by Owner of a Notice to Proceed for such Work.

10.4 If Design-Builder intends to perform any Work other than Design Services or General Conditions of Contract Work it shall request authority to proceed with such work by delivering to Owner and Independent Representative a written request. The written request shall identify the Work to be self-performed and the amount that Design-Builder proposes to charge for self-performed Work. Design-Builder will self-perform Work, other than Design Services, only after written authorization from Owner.

Article 11 **Construction Administration Fee**

11.1 The Design-Builder's Construction Administration Fee shall cover the Design-Builder's profit, general overhead and all expenses in connection with maintaining and operating Design-Builder's main office and any branch or field offices attributable to the Agreement.

11.2 References in the General Conditions of Contract to Design-Builder's "overhead" and "profit" refer to the Construction Administration Fee.

11.2.1 The Construction Administration Fee includes:

11.2.2 Salaries of Design-Builder's officers, project manager(s), estimators and schedulers not directly assigned to the Project.

11.2.3 Salaries of persons employed in the main or branch offices of the Design-Builder whose time is devoted to the general conduct of the Design-Builder's business, such as office managers, stenographers, plan clerks, file clerks, and draftsmen.

11.2.4 Overhead or general expenses of any kind unless specifically addressed otherwise herein.

11.2.5 Services and expenses of the estimating, personnel, accounting, budget control, audit and management information systems (other than pre-construction

services) relating to accounting in Design-Builder's office and even if at a site, except as specifically identified herein.

11.2.6 Interest on the Design-Builder's capital or on money borrowed by the Design-Builder, including the capital employed by the Design-Builder in the performance of the Work.

11.2.7 Costs associated with Owner's security bond.

11.2.8 Amounts required to be paid by Design-Builder for Federal and/or State income and franchise taxes.

11.2.9 Legal, accounting, or other similar professional services provided by or to Design-Builder, in regard to disputes, arbitrations, litigations or other such proceedings with Subcontractors, with municipal authorities, with the Owner, the Design Consultants or any other person or entity relating to the Program or otherwise.

Article 12 **Contract Savings**

12.1 If the actual Cost of the Program Work plus the Construction Administration Fee is less than the Program GMP for all work on which Design-Builder received a Notice to Proceed, then One Hundred Percent (100%) of any savings shall be returned to the Owner.

12.2 For items identified as "Allowances" in the Contract Documents and a Project GMP Proposal, One Hundred Percent (100%) of any savings shall be the Owner's. The Cost of the Work included in the Allowances shall be determined in accordance with the General Conditions of Contract except that any claim by the Contractor for an adjustment to the GMP based on the cost for Allowance work shall be made within a reasonable time after the issuance of the Drawings and Specifications for the Allowance items. Any increase to Allowance amounts based upon estimates by the Contractor, which increases exceed such Allowance amounts, shall not result in any increase to the Design-Builder's Fee.

Article 13 **Payments**

13.1 Payments for Design Services shall be monthly based on the earned value with design consultant's work product reviewed by the Owner's Independent Representative. All Design Services, shall be billed separately from Construction Services and not as a Cost of the Work. All payment requests shall be submitted on a form approved by Owner.

13.2 Payments for Construction Services shall be made as provided for in the General Conditions of Contract.

13.3 Payment for approved Additional Services and Reimbursable Expenses, if any, shall be made monthly upon presentation of the Design-Builder's statement of services rendered or expenses incurred.

13.4 This Agreement is subject to the assessment of liquidated damages against Design-Builder. Amounts assessed as liquidated damages, and other amounts to which Owner is entitled by way of setoff or recoup, are determined without respect to whether such liquidated damages, setoffs, or recoupment are made against moneys due Design-Builder under design services or construction services.

13.5 With each application for payment, Design-Builder shall submit all receipts, invoices with check vouchers or other evidence of payment, petty cash account information, payrolls, and any and all other evidence which Owner or its designated representatives shall deem necessary to support the amount requested.

13.6 The Construction Administration Fee shall be shown as a separate line item on the Schedule of Values. The amount of the Construction Administration Fee requested shall be in the same proportion to the total Construction Administration Fee as the amount requested for the Cost of the Work relative to the total Cost of the Work determined using the then-current Program GMP to the extent possible and Estimated Project Budget for remaining Projects.

13.7 Retainage as specified in the General Conditions of Contract will be applied to the entire amount requested including the Cost of the Work and the Construction Administration Fee.

13.8 Each Schedule of Values submitted shall maintain the originally established value for each work classification line item or subcontractor, and shall contain any revisions to costs or cost estimates for each such classification or subcontractor. The format and tracking method of the original schedule of values and of all updates thereto shall be subject to the approval of Owner. If at any time, the amount shown on the Schedule of Values exceeds the Program GMP allocable to that classification or subcontractor, then the amount payable to Design-Builder by Owner shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including the Construction Administration Fee) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed).

13.9 Payments to Subcontractors included in an application for payment shall not exceed the percentage of Work allocable to that Subcontractor for each respective Schedule of Values classification which has been actually completed.

13.10 Owner shall have the right to withhold from payments due Design-Builder such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Design-Builder or failure of Design-Builder to perform Design-Builder's obligations under this Agreement.

13.11 Design-Builder's request for final payment relating to a Project shall not be made until Design-Builder delivers to Owner a complete release of all liens arising out of the Project and an affidavit that, to the best of Design-Builder's information or knowledge, the release includes and covers all materials and services over which Design-Builder has control and for which a lien could be filed. Alternatively, Design-Builder may furnish a bond satisfactory to Owner to indemnify Owner against any lien. If any lien remains unsatisfied after all payments are made, Design-Builder shall refund to Owner all moneys Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and Owner shall have all remedies at law and in equity.

13.12 Owner shall have no obligation to make final payment until a final accounting of the Cost of the Work has been submitted by Design-Builder and has been verified by Owner or Owner's representatives. The aggregate total of payments to Design-Builder shall not exceed the total of the actual Cost of the work as verified by Owner or Owner's representative from Design-Builder's final accounting plus the Construction Administration Fee, as certified for payment in accordance with this Agreement. In no event shall the aggregate sum of Construction Phase payments to the Design-Builder exceed the Guaranteed Maximum Price. If payments made to Design-Builder exceed that which is due and owing, then Design-Builder shall promptly refund such excess to Owner.

13.13 Notwithstanding any other contractual provision to the contrary, Owner shall not be obligated to make any payment (whether a progress payment or final payment) to Design-Builder under any of the following circumstances:

13.13.1 Design-Builder is in breach or default under this Agreement.

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

13.13.3 Design-Builder has failed to make payments promptly to consultants or other third parties used in connection with any services for which Owner has made payment to Design-Builder;

13.13.4 If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the services in accordance with this Agreement.

13.14 Nothing contained herein shall require the Owner to pay the Design-Builder an aggregate amount for Construction Services that exceeds the GMP or to make any payment if, in the Owner's belief, the cost to complete the Work would exceed the GMP less previous payments to Design-Builder.

13.15 No partial payment made hereunder shall constitute, or be construed to constitute, final acceptance or approval of that part of the services to which such partial payment

relates, or a release of Design-Builder from any of its obligations hereunder or liabilities with respect to such services.

13.16 Design-Builder shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services as required by Texas Government Code Chapter 2251.

13.17 Owner shall have the right to verify and audit the details set forth in Design-Builder's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Design-Builder during normal business hours; (2) examining any reports with respect to a Project; (3) interviewing Design-Builder's business employees; (4) visiting Project sites; and (5) other reasonable action. Design-Builder's records shall be kept on the basis of generally accepted accounting principles.

13.18 The acceptance by Design-Builder or Design-Builder's successors of final payment under this Agreement, shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which Design-Builder or Design-Builder's successors have or may have against Owner under the provisions of this Agreement except those previously made in writing and identified by Design-Builder as unsettled at the time of the final request for payment.

Article 14

Pre-Existing Conditions And Design Errors And Omissions

14.1 The Design-Builder acknowledges that it was afforded unrestricted access to the existing improvements and conditions on the Project sites and it has thoroughly investigated those conditions. The results of Design-Builder's investigations have been taken into account in establishing the proposing and establishing a Project GMP Proposal. Therefore, Design-Builder shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Price for Design Phase Services or for Construction Phase Services arising from conditions that Design-Builder discovered or, in the exercise of reasonable care, should have discovered in Design-Builder's investigation.

14.2 Before proceeding with the Work, the Design-Builder shall review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the documents of which it is aware. Design-Builder is responsible for discovering and correcting any error, omission, conflict, inconsistency or lack of clarity, in the Construction Documents prepared by Design-Builder. Design-Builder shall be responsible for all costs, including the cost of redoing or remedying the Work and time delays, resulting from any error or omission in the Contract Documents.

Article 15

Project Termination And Suspension

15.1 This Agreement may be terminated during the Design Phase by either party upon

fifteen (15) day written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and such failure to perform is not cured within such fifteen (15) day period.

15.2 The Owner may, at its sole discretion and option, terminate this Agreement at any time, in whole or in part, for the convenience of the Owner without penalty.

15.3 In the event of termination that is not the fault of the Design-Builder, the Design-Builder shall be entitled to compensation for all services performed to the termination date together with Reimbursable Expenses then due provided, however, Design-Builder has delivered to Owner such statements, accounts, reports and other materials as required below together with all reports, documents and other materials prepared by Project Architect prior to termination. Upon such payment, Owner shall have no further obligation to the Design-Builder. Design-Builder agrees to waive all claims for damages, including lost or anticipated profits from unperformed Work, arising from or related to any such termination by Owner.

15.4 Termination of this Agreement shall not relieve Design-Builder or any of its employees, subcontractors, or consultants of liability for violations of this Agreement or for any act or omission, or negligence, of Design-Builder. In the event of a termination, Design-Builder hereby consents to employment by Owner of a substitute Design-Builder to complete the services under this Agreement, with the substitute Design-Builder having all rights and privileges of the original Design-Builder of the Program.

15.5 As of the date of any termination of this Agreement, Design-Builder shall furnish all documents and materials as have been prepared by Design-Builder in connection with Design-Builder's responsibilities hereunder. Owner shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of any Project, or otherwise.

15.6 If the Project is suspended or abandoned in whole or in part for more than three months, the Design-Builder shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than three months, the Design-Builder's compensation for Design Services shall be equitably adjusted if, in the Owner's reasonable opinion, such adjustment is warranted.

Article 16 **Indemnification**

16.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DESIGN-BUILDER AND ITS AGENTS, PARTNERS, VENTURERS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY OWNER, AND HOLD HARMLESS THE OWNER, AND ITS TRUSTEES, EMPLOYEES, AND AGENTS (COLLECTIVELY

“INDEMNITEES”) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENT AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND OR DESCRIPTION (COLLECTIVELY “LIABILITIES”) OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF SERVICES, OR PROVISIONS OF GOODS, BY DESIGN-BUILDER PURSUANT TO THIS AGREEMENT, OR ANY PART THEREOF, WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE DESIGN-BUILDER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF AN INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THE INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THE ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH OWNER OR ANY OF THE INDEMNITEES HAS BY LAW.

16.2 DESIGN-BUILDER SHALL PROTECT AND INDEMNIFY THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS, AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE SERVICES PERFORMED OR GOODS PROVIDED HEREUNDER OR THE USE BY DESIGN-BUILDER, OR BY THE OWNER AT THE DIRECTION OF DESIGN-BUILDER, OF ANY ARTICLE FOR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR A THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, OWNER SHALL PROMPTLY NOTIFY DESIGN-BUILDER, AND DESIGN-BUILDER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. DESIGN-BUILDER DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER’S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH DESIGN-BUILDER AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR EXPENSE.

16.3 THE OBLIGATIONS OF THE DESIGN-BUILDER UNDER THIS SECTION SHALL NOT EXTEND TO OWNER’S INDEPENDENT ARCHITECT, SUCH ARCHITECT’S CONSULTANTS, OR AGENTS AND EMPLOYEES OF

ANY OF THEM FROM LIABILITY CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE OWNER'S INDEPENDENT ARCHITECT; OR, (2) NEGLIGENCE OF THE OWNER'S INDEPENDENT ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT IN THE PLANS, DESIGNS OR SPECIFICATIONS THAT ARE PART OF THE CONSTRUCTION CONTRACT; AND, (3) ARISING FROM: (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR, (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH OR PROPERTY DAMAGE OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE §130.001, ET SEQ.

16.4 IN ACCORDANCE WITH TEXAS INSURANCE CODE §151.102, EXCEPT AS PROVIDED BY TEXAS INSURANCE CODE §151.103, THE OBLIGATIONS OF THE DESIGN-BUILDER UNDER THIS ARTICLE 16 SHALL NOT REQUIRE DESIGN-BUILDER TO INDEMNIFY, HOLD HARMLESS, OR DEFEND THOW INDEMNIFIED HEREUNDER AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE OWNER, ITS AGENT OR EMPLOYEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE OWNER, OTHER THAN THE DESIGN-BUILDER OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER.

16.5 THE INDEMNITIES CONTAINED HEREIN SHALL SURVIVE THE TERMINATION OF ANY AGREEMENT OR PURCHASE ORDER FOR ANY REASON WHATSOEVER.

Article 17 **Special Warranties**

17.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Design-Builder agree and acknowledge that Owner is entering into this Agreement in reliance on Design-Builder's representations regarding its expertise and ability to provide design/build services. Design-Builder covenants with Owner to use its best efforts, skill, judgment, and abilities to perform the obligations hereunder and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the usual and customary standards of Design-Builder's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. In this respect, the Design-Builder shall review all laws, codes and regulations applicable to the Design-Builder's services including without limitation, 19 T.A.C. §61.1040. The Design-Builder shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Construction Documents shall comply with all applicable laws, statutes, ordinance, building codes, rules and regulations. On trench excavations in excess of five feet

in depth, Design-Builder shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures in accordance with Texas Government Code §2166.303, Texas Health & Safety Code, Subchapter C, §756.021, *et seq.*, and OSHA 1926.652-.653. Design-Builder shall prepare detailed plans and specifications directing Design-Builder in safe execution of trenching and shoring. Should Design-Builder fail to comply with the standard of care required herein, Design-Builder's responsibilities under this Agreement, or the applicable laws, regulations, codes, ordinances, and orders, Design-Builder hereby agrees to bear the full cost of correcting Design-Builder's Work and Services, those of its consultants, and those of any others who have acted in reliance thereon.

17.2 The Design-Builder's architectural and engineering services to be provided under this Agreement shall be performed consistent with the professional skill and care ordinarily provided by competent architects/engineers practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect/engineer, as set out in Texas Local Government Code §271.904(d).

17.3 The Design-Builder's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the Design-Builder be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Design-Builder's skill and knowledge in performing the services required hereunder.

17.4 The Design-Builder warrants, represents, covenants, and agrees that all persons connected with the Design-Builder directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations and were selected based on demonstrated competence and qualifications, in the manner provided by Texas Government Code Section 2254.004.

17.5 The Design-Builder warrants, represents, covenants, and agrees to call to Owner's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Design-Builder (by the Owner or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the Design-Builder's responsibilities or obligations hereunder in a case where such document or data is furnished unless the Design-Builder advises Owner in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes the Design-Builder to proceed in accordance with the data as originally given.

17.6 The Design-Builder warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in accordance with Standard of Care and in the most expeditious and economical manner consistent with the interests of Owner.

17.7 Design-Builder warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the obligations required hereunder.

17.8 Design-Builder warrants, represents, and agrees that individual executing this Agreement on behalf of Design-Builder has been duly authorized to act for and bind Design-Builder.

17.9 Except for the obligation of Owner to pay Design-Builder certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Design-Builder or to anyone claiming through or under Design-Builder by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Design-Builder, no agent, officer, director, employee, or trustee of Owner, the Silverton Independent School District, or anyone claiming under Owner has or shall have any personal liability to Design-Builder or to anyone claiming through or under Design-Builder by reason of the execution or performance of this Agreement.

17.10 Certification of No Asbestos Containing Materials or Work.

17.10.1 The Design-Builder shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

17.10.2 The Design-Builder shall provide at Substantial Completion, a notarized certification to the Owner and the Owner's Independent Architect that no asbestos containing materials or work was provided, installed, furnished or added to the project.

17.10.3 The Design-Builder shall take whatever measures it deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

17.10.4 The Design-Builder shall insure compliance with all federal and state laws pertaining to asbestos, lead paint and other hazardous materials from all of his subcontractors and assigns as listed in item C above. All materials used on this project shall be certified as non-Asbestos Containing Building Materials (ACBM).

17.10.5 Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this project.

17.10.6 The Contractor shall provide to the extent deemed necessary for compliance by the State, data sheets and/or labels as proof of compliance.

17.10.7 The Contractor shall provide a notarized certification that no ACBM's were used.

Article 18 **Bonds and Insurance**

18.1 Insurance. The Design-Builder shall carry professional liability and errors and omissions insurance, covering the design services provided under this Agreement, as is acceptable to and approved by the Owner. Such insurance shall have minimum policy limits of One Million Dollars (\$1,000,000) in the aggregate and One Million Dollars (\$1,000,000) per claim. The fees for such insurance will be at the expense of the Design-Builder. The Design-Builder shall maintain such insurance throughout the course of the Work and for a minimum of one (1) year following Substantial Completion of the Work. A Certificate of Insurance indicating the expiration date of the Design-Builder's professional liability insurance is required. No policy providing such insurance shall be cancelled without thirty (30) days prior written notice to the Owner. If Design-Builder is performing the Design Services, then the professional liability insurance shall be in Design-Builder's name and shall include a Design/Build Endorsement in form acceptable to Owner. If Design-Builder is furnishing the Design Services through others, then the professional liability policy or policies shall be in the name of the respective professionals performing such services, which shall include all architects and engineers furnishing services for a Project, and Design-Builder shall also provide a Contractor's Errors and Omissions policy naming it as the insured. If Design-Builder is performing some design services and furnishing others, then the insurance policies shall be provided covering all design entities in accordance with the previously stated requirements.

18.2 Within ten (10) days of acceptance by the Owner of a Guaranteed Maximum Price Proposal, Design-Builder shall provide performance and payment bonds on forms approved by Owner, in accordance with the requirements set forth in the General Conditions of Contract. The penal sum of the payment and performance bonds shall be equal to the Guaranteed Maximum Price or, if a Guaranteed Maximum Price has not been established, the penal sum of the bonds shall be equal to the Construction Budget for the entire Project as set forth in the Design Criteria Package. When a Guaranteed Maximum Price is established, Design-Builder shall provide revised performance and payment bonds in the amount of the Guaranteed Maximum Price. As Guaranteed Maximum Prices are established for additional Projects or as Projects are completed, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

18.3 Design-Builder shall provide additional insurance as set forth in the General Conditions of Contract to Design-Build Agreement Between Silverton Independent School District and Design-Builder, which is incorporated herein by reference for all intents and purposes.

Article 19 **Miscellaneous Provisions**

19.1 Assignment. This Agreement is a personal service contract for the services of Design-Builder, and Design-Builder's interest in this Agreement, duties hereunder and/or fees

due hereunder may not be assigned or delegated to a third party.

19.2 Records of Reimbursable Expenses and expenses pertaining to Additional Services shall be kept on the basis of generally accepted accounting principles and shall be available for audit by the Owner or the Owner's authorized representative at mutually convenient times.

19.3 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Design-Builder and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Design-Builder and Owner.

19.4 Captions. The captions of articles in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

19.5 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. Briscoe County, Texas shall be the sole place of venue for any legal action arising from or related to this Agreement or the Program in which the Owner is a party.

19.6 Waivers. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

19.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

19.8 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Design-Builder a representative to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Design-Builder shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.

19.9 Records. Records of Design-Builder's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Program, unless Owner otherwise instructs Design-Builder in writing.

19.10 Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be

in writing and by e-mail. Notwithstanding delivery by e-mail, Notice shall be deemed to have been given when hand-delivered to the Design-Builder or Owner or sent by certified U.S. mail to the address set out below. Notices sent by mail are deemed effective three (3) business days after the date of mailing. Any notice required or permitted under this Agreement shall be sent to the following persons and addresses:

If to Owner: Michelle Frances, Superintendent (or her successor)
700 Loretta Street
Silverton, Texas 79257
(e-mail: michelle.francies@silvertonisd.net)

With copies to: D. Scott Stark
1500 S. Taylor
Amarillo, TX 79101
(email: scottstarkdesign@yahoo.com)

If to Design-Builder: _____

A party may change his address for notice purposes by complying with this Section.

19.11 Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

19.12 Enforcement. It is acknowledged and agreed that Design-Builder's services to Owner are unique, which gives Design-Builder a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages; accordingly, Design-Builder acknowledges and agrees that a breach by Design-Builder of the provisions hereof will cause Owner irreparable injury and damage. Design-Builder, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if Owner is not in breach of this Agreement.

19.13 Criminal History Checks.

19.13.1 So that Owner can obtain the national criminal history record information required by Texas Education Code § 22.0834 on all "covered employees" (as defined in this Section) of Design-Builder, its subcontractors, or any subcontracting entities who will perform the Work, Design-Builder shall submit to Owner the name and all identifying information necessary to enable Owner to obtain the national criminal history information on those covered employees before they begin the Work. Design-Builder's submission will include the employee's written authorization for Owner to obtain such criminal history information. Owner may, in its sole discretion, prohibit the use of any employee to perform the Work after its review of the criminal history information, but cannot disclose the criminal history information to Design-Builder.

Design-Builder shall reimburse Owner for Owner's costs incurred in obtaining the criminal history information.

19.13.2 If Design-Builder receives information that a "covered employee" has a reported "disqualifying criminal history", as those terms are defined below, then Design-Builder will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Design-Builder agrees to discontinue using that covered employee to provide services on Owner's Project. If Design-Builder has taken precautions or imposed conditions to ensure that the employees of Design-Builder and any subcontractor will not become covered employees, Design-Builder will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

19.13.3 For the purposes of this Section, "covered employees" means employees, agents, or applicants of Design-Builder who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code Section 21.060, and 19 Texas Administrative Code Section 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

19.13.4 In addition to the above requirements, Owner or Design-Builder will at least annually obtain criminal history record information that relates to any employee, agent, or applicant of the Design-Builder, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location, where students are likely to be present. Design-Builder shall provide a list of all covered employees, with all necessary identifying information, to allow Owner to obtain criminal history record information for covered employees of the Design-Builder and all subcontracting entities. Design-Builder shall update this list on Owner's request. Design-Builder shall assume all expenses associated with the background checks and shall immediately remove any employee, agent, or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present."

19.13.5 Failure to comply with the requirements of Texas Education Code §22.0834 to the extent Design-Builder is capable shall constitute an immediate event of default by Design-Builder.

19.14 Notices and Certifications. The Design-Builder shall comply with, give notices and certifications and provide certifications as may be required by applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Project including, but not limited to, 19 T.A.C. §61.1040.

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In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

DATED: _____, 2026.

OWNER:

DESIGN-BUILDER:

**SILVERTON INDEPENDENT
SCHOOL DISTRICT**

By: _____
Michelle Frances, Superintendent

By: _____

EXHIBIT A

GENERAL PROJECT DESCRIPTION AND DESIGN CRITERIA

SAMPLE

**GENERAL CONDITIONS OF CONTRACT TO
DESIGN-BUILD AGREEMENT BETWEEN
SILVERTON INDEPENDENT SCHOOL DISTRICT
AND
[Insert Name of D-B]**

**Article 1
General**

1.1 Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Unless the context clearly requires another meaning, capitalized terms herein shall have the meaning assigned in the Silverton Independent School District Design-Build Agreement executed by Silverton Independent School District and [insert name of D-B] contemporaneously herewith (the “Agreement”) and Appendix 1 attached hereto, entitled Definitions, which is adopted by reference for all intents and purposes.

**Article 2
Design-Builder’s Services and Responsibilities**

2.1 General Services and the Master Program Schedule

2.1.1 Design-Builder’s Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder’s Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder’s Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 During the period commencing with the date hereof, Design-Builder shall provide Owner with a bi-weekly status report detailing the progress of each Project. All reports shall include whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder’s ability to complete the work for the Contract price and within the Contract Time(s).

2.1.3 Commencing with date hereof, the following shall occur:

2.1.3.1 Design-Builder and Owner shall agree to a Program Schedule setting out Substantial Completion Dates for each Project, GMP Proposal Dates for each Project, such other Contract Times as may have been agreed between Design Builder and Owner, manpower and financial budgets for each Project and such other matters as may be determined by agreement of Design Builder and Owner. The Program Schedule will include reasonable periods for Owner’s review of

design drawings and submissions for presentation of appropriate materials and designs to Owner's Board of Trustees at regularly scheduled monthly meetings, and for approvals of authorities having jurisdiction over a Project.

2.1.3.2 Design-Builder will outline its plan for integration and management of design consultants.

2.1.3.3 Design-Builder and Owner will agree to a Procedures Manual to further define payment and communications processes that complies with Texas Government Code §2251.001, *et seq.*

2.1.4 After the Owner's acceptance of a Guaranteed Maximum Price proposal for any Project, the Program Schedule relating to that Project shall not be modified except for good cause as approved by the Owner. Owner's approval of modifications required by circumstances outside the control of Design-Builder shall not be unreasonably withheld.

2.2 Design Professional Services

2.2.1 Design-Builder has selected and designates _____ [insert name of architect/engineer] to provide Design services required for the Program. Design-Builder certifies that _____ and all other professional consultants have been or will be selected on the basis of demonstrated competence and qualifications pursuant to Texas Government Code Section 2269.307(b).

2.2.2 Design-Builder shall, consistent with applicable law, provide through qualified licensed design professionals retained by Design-Builder, the necessary Design Services including architectural, engineering and other design professionals. All agreements involving Design Consultants shall acknowledge that such design services shall be performed consistent with the professional skill and care ordinarily provided by architects/engineers practicing in the same or similar locality under the same or similar circumstances and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect/engineer, as set out in Texas Local Government Code §271.904(d), hereinafter referred to as the "Standard of Care."

2.2.3 If a consultant for Design Services was not identified in Design-Builder's response to Owner's Request for Proposal, the Design-Builder shall submit the names and credentials of such proposed consultants for Design Services for approval by the Owner, which approval shall not be unreasonably withheld. Upon request, Design-Builder shall provide the Owner with a copy of the fully executed contract or agreement authorizing services by any such consultant. All such contracts shall provide that the consultants are bound to Design-Builder in the same manner and to the same extent as Design-Builder is bound to Owner.

2.3 Professional Services

2.3.1 The Design-Builder warrants to Owner the sufficiency and completeness of all Design Services performed and that all drawings, specifications, and other information furnished or provided by Design-Builder shall be free from material errors, defects and

omissions. Approval or acceptance of any Design Services by Owner shall not in any way release Design-Builder from any duty, responsibility or liability for such services, it being understood that Owner is at all times relying upon Design-Builder's skill and knowledge in performing the Design Services.

2.3.2 Owner shall have the right to reject any defective Design Services or other defective Work on a Project of which Owner becomes aware and Design-Builder shall promptly correct any such defect at Design-Builder's expense. Should any portion of the Work be damaged or defective due to an error or omission in the Design Services, including errors or omissions in any plans, drawings, specifications, and other construction document materials prepared or furnished by Design-Builder, Design-Builder shall promptly correct any such damage or defect at no additional cost to the Owner. Should the Design-Builder refuse or neglect to correct any such damage or defect within a reasonable time after notice, Owner may cause the damage or defect to be corrected and Design-Builder shall reimburse Owner for all expenses incurred to correct the damage or defect on demand.

2.4 Design Services

2.4.1 Design-Builder shall be responsible for managing the Design Services to ensure that each Project, as designed, can be constructed for the Estimated Project Budget or, if a Project GMP Proposal has been accepted by Owner, that each Project, as designed, can be constructed for the Project GMP. The obligation to design each Project to achieve the Program objectives of scope and cost shall continue through completion and acceptance of Construction Documents. Any adjustment to the scope or quality of a project considered necessary to comply with the Estimated Project Budget or the Program during the design phase shall be mutually agreed upon prior to Owner's acceptance of a Project GMP Proposal and shall be considered normal to that process. After Owner's acceptance of a Project GMP Proposal, the Project GMP may be increased only in accordance with these General Conditions of Contract.

2.4.2 As a part of Design Services and for the compensation identified as the Design Services Fee, the Design-Builder shall provide the following services as appropriate:

2.4.2.1 Architectural Services

2.4.2.2 Landscape Architectural Services

2.4.2.3 Civil Engineering Services

2.4.2.4 Structural Engineering Services

2.4.2.5 Mechanical Engineering Services

2.4.2.6 Electrical Engineering Services

2.4.2.7 Construction Cost Estimating

2.4.2.8 Storm Water Pollution Prevention Plan Design Services

2.4.2.9 Engineering Surveying

2.4.2.10 Geotechnical Engineering

2.5 Provision Relating To All Design Stages

2.5.1 Design-Builder shall perform Design Services with respect to each Project in staged packages as appropriate to each of the design stages identified below in this Article. Design-Builder shall not proceed to any subsequent stage of Design Services for any Project until Owner has authorized Design-Builder to proceed in writing, except at the Design-Builder's sole financial risk.

2.6 Pre-Design Stage

2.6.1 For such Project, the Design-Builder shall provide a preliminary evaluation of the Project description and the Estimated Project Budget, as shown on Exhibit "A" to the Agreement, each in terms of the other.

2.6.2 The Design-Builder has visited each site to become sufficiently familiar with the existing facilities, systems and conditions to ensure that each Project as described will functionally interface with the existing conditions as required.

2.6.3 The Design-Builder shall review all laws, codes and regulations applicable to the Design-Builder's services including without limitation, 19 T.A.C. §61.1040. The Design-Builder shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Construction Documents shall comply with all applicable laws, statutes, ordinance, building codes, rules and regulations. Design-Builder shall advise the Owner if any program requirement may cause a violation of such laws.

2.6.4 Before proceeding to the Schematic Development Stage for any Project, Design-Builder shall obtain Owner's written authorization to proceed.

2.7 Schematic Design Phase

2.7.1 Based on the approved pre-design documents for such Project accepted by the Owner and the Estimated Project Budget, the Design-Builder shall develop sufficient alternative approaches to design and construction of each Project and review them with the Owner. The Design-Builder shall prepare, for each Project, schematic design documents and a preliminary construction cost estimate and submit them to the Owner for approval. The construction cost estimate shall affirm adherence to the Estimated Project Budget.

2.7.2 The Design-Builder shall furnish and deliver to the Owner the number of complete printed sets of Schematic Design documents as required.

2.7.3 Before proceeding to the Design Development Stage of a Project, the Design-Builder shall obtain Owner's written authorization to proceed and the Owner's agreement that the preliminary construction cost estimate is consistent with Estimated Project Budget.

2.8 Design Development Stage

2.8.1 Based on the approved schematic design documents for each Project and the Estimated Project Budget, the Design-Builder shall prepare design development documents and a detailed construction cost estimate and submit them to the Owner for approval. The design development documents shall fix and describe the size and character of the Project that is the subject of the design development documents, including site work, architectural, structural, mechanical, electrical and plumbing systems, materials and such other elements as may be appropriate. The detailed construction cost estimate shall confirm adherence to the Estimated Project Budget.

2.8.2 The Design-Builder shall furnish and deliver to the Owner the number of complete printed sets of design development documents as required.

2.8.3 The Design-Builder shall prepare presentation materials as requested by Owner and, if requested, present them at a Board of Trustees meeting.

2.8.4 Before proceeding into the Construction Document Stage, the Design-Builder shall obtain Owner's written approval of the design development documents and agreement that the detailed construction cost estimate is consistent with the Estimated Project Budget.

2.9 Construction Documents Stage

2.9.1 Based on the approved design development documents and the Project GMP, the Design-Builder shall prepare construction documents consisting of drawings and specifications and submit them to the Owner for approval. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall provide for the construction of the Project within the Project GMP.

2.9.2 The construction documents shall be consistent in all material respects with Design-Builder's prior design proposals to Owner and with the Project GMP.

2.9.3 The Design-Builder shall advise the Owner regarding construction phasing and scheduling, the construction contract time period, and such other construction conditions considered appropriate for each Project.

2.9.4 The Design-Builder shall assist and advise the Owner in connection with the Owner's responsibility and procedures for obtaining approval of authorities having jurisdiction over each Project.

2.9.5 The Design-Builder shall furnish and deliver to the Owner the number of complete printed sets of Construction Documents as required.

2.9.6 Following Owner's approval of the construction documents, Design/Builder shall deliver to the Owner computer-aided design and drafting ("CADD") system copies of the construction documents in the format and media specified by the Owner. The CADD

system copies shall use a software version acceptable to Owner's Independent Representative.

2.9.7 Following Owner's approval of the Construction Documents, Design-Builder shall not be entitled to any adjustment in the GMP except for changes in Project scope or quality which materially increase or decrease the cost to construct the Project that are ordered by Owner in writing in accordance with this Agreement.

2.10 Construction Cost Estimates

2.10.1 The Design-Builder shall prepare and provide detailed construction cost estimates of each Project in a form acceptable to the Owner and Owner's Independent Representative with the plans and specifications submitted for review at the completion of the Schematic Design Stage, the Design Development Stage, and all required review phases of the Construction Documents Stage.

2.10.2 Should any construction cost estimate for a Project exceed the Estimated Project Budget or the Estimated Project GMP, the Design-Builder shall advise Owner and shall recommend the steps that can be taken to cause the Project to meet the Estimated Project Budget or the Estimated Project GMP.

2.11 Review Drawings

2.11.1 The Design-Builder, at its sole expense, shall provide Owner with the required number of design document review sets at each required stage of completion of a Project.

2.11.2 The Design-Builder shall incorporate into the documents such corrections and amendments as the Owner requests at each stage of review, unless the Design-Builder objects to such changes in writing and Owner agrees to the objections. Any additional cost incurred due to Design-Builder's failure to incorporate Owner's requested corrections and amendments shall be born by the Design-Builder.

2.11.3 The Design-Builder shall identify to Owner in writing anything in Design-Builder's drawings and specifications and any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Design-Builder (by Owner or any other party) that Design-Builder regards as unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. The Design-Builder shall be solely responsible for the use of such documents or data unless the Design-Builder advises Owner in writing that in its opinion, such documents or data are unsuitable, improper, or inaccurate and Owner instructs the Design/Builder in writing to proceed in accordance with the documents or data as originally given.

2.11.4 The Design-Builder shall pay all costs for plans, specifications and other design and construction documents used by the Design-Builder and its consultants and subcontractors, and all documents produced for review by the Owner, except for changes generated solely by Owner.

2.12 Construction Phase Services

2.12.1 Design-Builder shall furnish the following Construction Services as part of Design Services and without additional cost to Owner.

2.12.2 The Project Architect shall assist in the administration of all contracts for construction of the Work.

2.12.3 The Project Architect, and related consultants, shall inspect Project sites at intervals appropriate to the type and stage of construction progress and as otherwise required by this Agreement to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such onsite observations, the Project Architect shall observe the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work.

2.12.4 In addition to site visits for general inspection and observation, the Project Architect shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Project Architect shall provide written reports of all site visits to the Owner, Owner's Independent Architect, and the Design-Builder within three business days.

2.12.5 The Design-Builder shall establish and maintain a numbering and tracking system for all project records, including changes, requests for information, submittals, and supplementary instructions shall provide updated records at each Owner's meeting and when requested.

2.12.6 The Design-Builder shall administer all regular progress and special meetings scheduled by the Owner and shall promptly provide meeting minutes to all parties within seven days. The Project Architect shall attend the Design-Builder's regularly scheduled planning meetings.

2.12.7 The Project Architect's certification of a Design-Builder's Estimate for Partial Payment for Construction Phase Services shall constitute a representation by the Project Architect to the Owner, based on the Project Architect's observations at the site as provided in this Agreement and on the data comprising the Design-Builder's Estimate for Partial Payment that the Work has progressed to the point indicated; that, to the best of the Project Architect's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents.

2.12.8 The Project Architect, with input from Owner's Independent Architect and approval of the Owner, shall interpret the technical requirements of the Contract Documents. The Project Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Design-Builder, and shall render written recommendations to the Owner

within a reasonable time on matters relating to the execution or progress of the Work or the interpretation of the Contract Documents.

2.12.9 The Project Architect shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the construction documents. Project Architect's interpretations and recommendations shall be consistent with the intent of and reasonably inferable from the Contract Documents. Project Architect's interpretations shall be made in written and/or graphic form including, if necessary or appropriate, supplemental documents to amplify or clarify portions of the construction documents.

2.12.10 The Project Architect shall review and approve or take other appropriate action upon the Design-Builder's submittals such as shop drawings, product data and samples, but only for conformance with the design concept of the Work set forth in the Contract Documents, and shall respond to Design-Builder's inquiries and questions and provide such supplemental information as appropriate. One copy of each submittal, shop drawing, product data, etc., shall be provided to the Owner.

2.12.11 The Project Architect shall provide assistance to the Owner in the review of the Design-Builder's requests for change orders and pricing thereof.

2.12.12 The Project Architect shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall, with Owner's approval, have authority to order minor changes in the Work not involving an adjustment in the Contract Price or an extension of a Contract Time, which are not inconsistent with the intent of the Contract Documents. In conjunction with each change, the Project Architect shall review the cost and time estimate and recommend to the Owner whether the proposal is appropriate. The Project Architect shall prepare revised contract drawings, where appropriate, to illustrate and document the work required by the change.

2.12.13 All proposed changes to drawings, plans and specifications, regardless of how initiated shall be fully described in the document depicting them as to scope of work added, removed, or changed. The original copies of the construction documents may be revised to show such changes, provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated revision addenda. All changes to design documents or specifications will be identified by date of change, revision number and other customary identification references.

2.12.14 The Project Architect shall participate in concealed space inspections, systems start-up inspections, Substantial Completion inspections to determine the dates of Substantial Completion. The Project Architect shall also participate in the Owner's final walk thru inspection one year after Final Completion. Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, within a period of one year from the date of Final Completion of the Work or any portion of the Work, or

within such longer period to the extent required by the Contract Document or any specific warranty included in the Contract Documents.

2.12.15 The Project Architect shall review, for conformance with the Contract Documents, Design-Builder's submission of guarantees and warranties.

2.12.16 The Project Architect shall assist the Owner in checking as-built drawings during the course of the Work in association with certifying progress payments and shall review final as-built documents for completeness and compliance with Contract requirements.

2.12.17 As required by Texas Government Code Section 2269.310, the Design-Builder shall provide a set of completed construction documents for the Project at the conclusion of construction. The documents must note any changes made during construction.

2.12.18 The Project Architect shall prepare and administer the construction punch list until all punch list items have been resolved to the Owner's satisfaction.

2.12.19 The Project Architect shall review Design-Builder's submission of operating and maintenance instructions, and all manuals, brochures, drawings, and other closeout documentation furnished by the Design-Builder for conformance with the requirements of the construction documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and construction documents consistent with the turnaround times set forth in the Program Schedule.

3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

- 3.2.1.2 To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at a Site;
- 3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-builder to perform the Work;
- 3.2.1.4 A legal description of each Site;
- 3.2.1.5 To the extent available, as-built and record drawings of any existing structures at each Site; and,
- 3.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at each Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Owner's Representative

3.3.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.4 Government Approvals and Permits

3.4.1 Owner, with assistance from Design-Builder, shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection.

3.4.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.5 Owner's Separate Contractors

3.5.1 Owner is responsible for all work performed on a Project or at a Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4
Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-builder is not responsible for any Hazardous Conditions encountered at a Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work at the Site immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining, or authorizing Design-Builder to retain, qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after the designated expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless, and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project and Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to a reasonable adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to a Site by Design-Builder, Subcontractors or anyone for whose acts they may not be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions

4.2.1 Concealed or latent physical conditions or subsurface conditions at a Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as

“Differing Site Conditions.” If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to a reasonable adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder’s cost and/or time of performance are adversely impacted by the Differing Site Conditions. Anything to the contrary notwithstanding, any condition that was known or should have been known to Design-Builder as provided in Section 14.1 of the Agreement shall not constitute a Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such conditions, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5 **Insurance and Bonds**

5.1 Performance and Payment Bonds

5.1.1 The Design-Builder is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Chapter 2253, Texas Government Code.

5.1.1.1 A Performance Bond in the full amount of the approved GMP shall be delivered prior to construction Work. The Performance Bond is solely for the protection of Silverton Independent School District and conditioned on the faithful performance of the Work in accordance with the Contract Documents.

5.1.1.2 A Payment bond payable to Silverton Independent School District shall be provided in the full amount of the GMP and solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Design-Builder or a supplier of required materials or labor.

5.1.1.3 Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.

5.1.1.4 A Security Bond in the amount of 5% of the Estimated Project Budget shall be provided to the Owner when the Agreement is executed. Payment and Performance Bonds, as required above, shall be furnished in the full amount of the GMP when a GMP contract is executed.

5.1.1.5 Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner.

5.1.1.6 Each bond shall be accompanied by a valid Power of Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond and stating any limit in the amount for which the attorney can issue a single bond.

5.2 The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Chapter 2253, Texas Government Code. If for any reason

a statutory payment or performance bond is not honored by the surety, the Design-Builder shall fully indemnify and hold the Owner harmless of and from any costs, losses, obligations or liabilities it incurs as a result.

5.3 Owner shall furnish certified copies of a payment bond and the related Contract to any qualified person seeking copies who complies with §2253.026, Texas Government Code.

5.4 Claims on Payment Bonds

5.4.1 Claims on payment bonds must be sent directly to the Design-Builder and his surety in accordance with §2253.041, Texas Government Code. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Design-Builder on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Design-Builder and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills and accepts no such responsibility because of any representation by any agent or employee.

5.5 Payment Claims When Payment Bond Not Required

5.5.1 Should the value of the Contract between the Owner and the Design-Builder be less than \$25,000.00, claimants and their rights are governed by Texas Property Code §§53.235 – 53.239. These provisions set out the requirements for filing a valid lien on funds unpaid to the Design-Builder as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claims.

5.6 Insurance Requirements

5.6.1 The Design-Builder shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract, which shall include items owned by Owner in the care, custody and control of Design-Builder prior to, during construction and during the warranty period. Design-Builder must also complete and file the declaration pages from the insurance policies with Owner whenever a previously identified policy period expires during the term of the Contract, as proof of continuing coverage. Acceptance of the insurance policy declaration pages by the Owner shall not relieve or decrease the liability of the Design-Builder. Design-Builder shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for payment to be withheld until evidence for renewal is provided to the Owner.

5.6.2 Design-Builder shall carry the following insurance with the minimum limits set forth herein. Such insurance must be carried with insurance companies acceptable to Owner. Design-Builder shall maintain such insurance, at its sole cost and expense, in full force and effect until this Contract has been fully performed, all equipment, implements and machinery of Design-Builder has been removed from, and all employees, agents, representatives and Subcontractors of Design-Builder have left Owner's premises, final payment of the Contract Sum is made, and all warranty periods have expired, unless any such coverage is required

pursuant to the terms of the Contract Documents to be maintained after all of the foregoing items have been completed. Design-Builder shall cause each insurance company (i) to issue the insurance on an occurrence basis; (ii) to provide defense as additional benefit and not within the limits of liability, (iii) to issue an endorsement to all policies that the policies are primary and that Owner's policies are excess, secondary and noncontributing, (iv) issue an endorsement to all policies to provide a waiver of subrogation in favor of Owner, (v) to issue an endorsement to all policies, except the workers' compensation and employer's liability insurance policies, to include Owner and its trustees, officers, employees, and agents as "additional insureds," and, (vi) to include in each insurance policy a provision that the insurance company or companies shall not cancel, non-renew, or change coverage from the requirements of the Contract Documents without providing at least 30 days' advance written notice to Owner. The insurance company or companies shall not exclude from coverage the negligence, of the "additional insureds," unless such negligence is solely attributable to the conduct of an "additional insured." Design-Builder releases Owner and its trustees, officers, employees and agents from any liability covered by the insurance for which subrogation is waived. Design-Builder shall provide to Owner at least 30 days' advance written notice of any contemplated cancellation, non-renewal, or material reduction in insurance coverage. Design-Builder shall provide to Owner a certified copy of any and all insurance policies required in this Contract if Owner requests a copy.

5.6.2.1 Insurance coverage shall be written for not less than the following limits, or greater if required by law:

(1) Employer's Liability insurance with minimum limits of \$1,000,000 for each employee for bodily injury by accident and for each employee for bodily injury by disease.

(2) Commercial General Liability insurance, including liability for the Project and blanket coverage, Personal and Advertising Injury, Products-Completed Operations, Medical Payments, Bodily Injury, and Property Damage, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products-completed operations aggregate, \$1,000,000 personal and advertising injury per occurrence, and \$5,000 medical expense. Design-Builder shall obtain an endorsement to each insurance policy to provide aggregate limits per location. Design-Builder shall cause each insurance company to delete any contractual liability exclusion with respect to the insurance, including insurance coverage for personal injury, hazards of explosion, collapse, fire, and underground property damage.

(3) Business Automobile Liability insurance with minimum combined single limits of \$1,000,000. Design-Builder shall cause each insurance company to provide coverage for liability arising out of the operation of owned, hired, and non-owned vehicles.

(4) Contractual Liability insurance with minimum limits of \$1,000,000 per occurrence, and \$2,000,000 general aggregate. Design-Builder shall obtain an endorsement to each insurance policy to provide aggregate limits per location. The contractual liability insurance shall not be limited to coverage for the Indemnity, Waiver, and Obligation to Defend provisions in this Contract, but, instead, the contractual liability insurance shall cover all of Design-Builder's obligations to the

fullest extent possible under the contractual liability endorsement. Further, the contractual liability insurance shall not limit, in any way, coverage provided to Owner and its trustees, officers, employees, and agents as additional insureds under each of Design-Builder's insurance policies.

(5) Builder's Risk "all-risk" or equivalent insurance policy, including boiler and machinery insurance, 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsehood, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Design-Builder, subcontractors, and sub-subcontractors. Design-Builder shall be responsible for maintaining said builder's risk insurance until the date of Final Completion. For any claim made against the builder's risk insurance, the deductible shall not exceed \$2,500.

(6) Umbrella/Excess Liability Insurance with minimum limits of \$10,000,000. Design-Builder shall cause each insurance company to provide the insurance on an umbrella basis in excess over and no less broad than the liability coverages required in this Contract, with the same inception and expiration dates as Commercial General Liability insurance, and with coverage that "drops down" for exhausted aggregate limits under liability coverages in this Contract.

5.6.2.2 Design-Builder shall provide to Owner before the Work is started and at least 30 days prior to the expiration of a policy or policies of insurance in effect during the term of this Contract a certificate or certificates of insurance evidencing all required insurance in the Contract Documents and acceptable to Owner. All certificates, among other things, shall:

- (1) Show Owner as a certificate holder.
- (2) Show Design-Builder as the Named Insured.
- (3) Show the names of the insurance companies providing each coverage, the policy numbers of each coverage, and policy dates of each coverage.
- (4) Show the name of the person providing the certificate and that person's address and telephone number.
- (5) Contain the signature of an authorized representative of the person providing the certificate.
- (6) Show that each insurance company named Owner and its trustees, officers, employees, and agents as additional insureds in each insurance policy.
- (7) Show the primary status of each insurance policy.
- (8) Have attached copies of all required endorsements to each insurance policy, and not contain the phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents or

representatives,” or similar phrases and shall include the commitment that each insurance company shall issue each insurance policy to the named and additional insureds, that each policy is in full force and effect, and that each insurance company shall give to Owner at least 30 days’ advance written notice, by certified mail, return receipt requested in the event of cancellation, non-renewal, or material reduction in coverage of any insurance policy.

5.6.2.3 Design-Builder shall not procure an insurance policy or policies with deductibles or self-insured retention in excess of \$10,000 or with an endorsement restricting, limiting, or excluding coverage in any manner without Owner’s prior written approval. Design-Builder shall pay all deductibles in the insurance that Design-Builder is required to provide under the Contract Documents.

5.6.2.4 The Design-Builder shall purchase and maintain insurance covering the Owner’s contingent liability for claims which may arise from operations under the Contract. This coverage can be afforded by adding Owner as additional insured on general liability insurance coverage.

5.6.2.5 Design-Builder’s failure to procure and maintain the required insurance shall constitute a material breach of, and default under, this Contract. If Design-Builder fails to remedy the breach within 5 days after notice from Owner, Owner may, in addition to any other remedy available to it, at its option, purchase the insurance, at Design-Builder’s expense, or immediately terminate this Contract. Design-Builder shall Indemnify and Defend Indemnified Persons from and against any Claims Arising from Design-Builder’s failure to procure and/or maintain the insurance.

5.6.2.6 The above insurance requirements are not intended to be compounded with the Design-Builder’s standing insurance policies. If the Design-Builder already has in force insurance policies, which provide the required coverage, there is no need to purchase duplicate coverage for this project.

5.6.3 Workers’ Compensation Insurance Coverage

State:	Statutory Benefits
Employer’s Liability	\$1,000,000 per accident
	\$1,000,000 disease, policy limit
	\$1,000,000 disease, each employee

A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project is required for the duration of the Project.

Duration of the Project includes the time from the beginning of the Work on the Project until the Design-Builder’s work on the project has been completed and accepted by the Owner.

Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096) include all persons or entities performing all or part of the services the Design-Builder has undertaken to perform on the Project, regardless of whether that person contracted directly with the Design-Builder and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The Design-Builder shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011(44) for all employees of the Design-Builder providing services on the project for the duration of the Project.

The Design-Builder must provide a certificate of coverage to the Owner prior to being awarded the Contract.

If the coverage period shown on the Design-Builder's current certificate of coverage ends during the duration of the Project, the Design-Builder must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

The Design-Builder shall obtain from each person providing services on a project, and provide to the Owner:

- (1) A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- (2) No later than seven days after receipt by the Design-Builder, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

The Design-Builder shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

The Design-Builder shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Design-Builder knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

The Design-Builder shall post on each project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons

providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The Design-Builder shall contractually require each person with whom it contracts to provide services on a Project, to:

- (1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011(44) for all of its employees providing services on the project for the duration of the Project;
- (2) Provide to the Design-Builder, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
- (3) Provide the Design-Builder, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- (4) Obtain from each other person with whom it contracts, and provide to the Design-Builder:
 - (a) A certificate of coverage, prior to the other person beginning work on the Project; and
 - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- (5) Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- (6) Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- (7) Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

The Design-Builder's failure to comply with any of these provisions is a breach of contract by the Design-Builder that entitles the Owner to declare the contract void if the

Design-Builder does not remedy the breach within ten days after receipt of notice of breach from the Owner.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC §110.110(i).

5.6.4 If insurance policies are not written for the amounts specified in 5.6.2, Design-Builder shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of primary coverage.

5.6.5 The above-listed insurance coverage must be tendered prior to execution of the Agreement, and in no event later than ten (10) days from the date of the Agreement. Failure to provide the insurance in a timely fashion may result in loss of Design-Builder's bid bond.

5.6.6 Owner shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements as they apply to the limits set out in 5.6.2.

Article 6 **Payment**

6.1 Schedule of Values

6.1.1 Within twenty (20) days of execution of the Agreement, the Design-Builder shall submit to the Owner for its approval a Schedule of Values reflecting the scheduled value of each Project included in the Program. The Schedule of Values shall include an accurate estimate and itemization of the Cost of the Work for each Project which shall include an itemization of the cost of materials and labor included therein. The Schedule of Values shall also include a fair allocation of the Construction Administration Fee to each Project, and an itemization of the various classifications of the Construction Work in each Project. The approved Schedule of Values will be used as the basis for the progress payments under the Contract.

6.1.1.1 The itemization of material and labor cost for each Project shall follow the trade divisions of the specifications. The itemization of the Cost of Work for each Project shall include provision for General Conditions Cost, fees, contingencies, and allowances allocated to the Project so that the sum of the items when added to the Contract Administration Fee allocated to the Project will equal the Estimated Project Budget for such Project.

6.1.1.2 The Design-Builder shall retain in its files a copy of all worksheets used in preparation of the Schedule of Values. The worksheets shall be made available to the Owner for verification at the time the proposed Schedule of Values is submitted by the Design-Builder, and thereafter the Design-Builder shall grant the Owner

during normal business hours access to worksheets from time to time and at any time during the period commencing upon the submission of the Schedule of Values and ending one year after final payment.

6.2 Progress Payments

6.2.1 Periodic progress payments will be made to the Design-Builder for Incurred Reimbursable Expenses Payable, Earned Construction Administration Fees Payable, Construction Work performed and materials in place or suitably stored and protected on sites or as otherwise agreed to by the Owner and the Design-Builder. Payment shall not become due until receipt by the Owner's Representative or his designee of a correct and complete Application for Payment, certified by the Project Architect and Owner's Independent Representative pursuant to this article. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Progress payments for Change Order work will not be accepted for payment until the Change Order is executed by the Design-Builder and the Owner.

6.2.1.1 Preliminary Application for Payment. Once each month, the Design-Builder may submit to the Project Architect and Owner's Independent Representative a complete, clean copy of a Preliminary Application for Payment, and shall attach the following:

6.2.1.1.1 Design-Builder's calculation of Incurred Reimbursable Expenses Payable;

6.2.1.1.2 Design-Builder's calculation of Earned Construction Administration Fees Payable;

6.2.1.1.3 The Design-Builder's estimate of the amount of Construction Work performed including labor furnished and materials incorporated into the Work, using the approved Schedule of Values; and

6.2.1.1.4 An updated schedule and such additional documentation as Owner may reasonably request.

6.2.1.2 Design-Builder's Application for Payment. As soon as practicable, but in no event later than seven days after receipt of the Preliminary Application for Payment, the Project Architect and the Owner's Independent Representative shall meet with the Design-Builder to review the Preliminary Application for Payment and to observe the condition of the Work. On the basis of this review, the Owner's Independent Representative and the Project Architect may require modifications to the Preliminary Application for Payment prior to the submittal of an Application for Payment, and shall promptly notice Design-Builder of revisions necessary for approval. As soon as practicable, but in no event later than seven days following the Preliminary Application for Payment review meeting, the Design-Builder shall submit an Application for Payment reflecting the required modifications to the Project Architect and Owner's Independent Representative attaching all additional documentation required by the Program Manager and Owner's Independent Representative, as well as the affidavit of an officer or representative swearing or affirming that all payrolls, bills for labor, materials, equipment, subcontracted work

or other indebtedness connected with the Design-Builder's Application for Payment have been paid or will be paid within the time specified in Chapter 2251, Government Code. No Application for Payment shall be complete unless it fully reflects all required modifications, and all required documentation including the Design-Builder's affidavit, are attached.

6.2.1.3 Certification by Project Architect and Owner's Independent Representative. As soon as practicable, but in no event later than seven days following the Project Architect's and Owner's Independent Representative receipt of the Design-Builder's Application for Payment, the Project Architect and Owner's Independent Representative shall review the same for completeness, and shall forward the Application for Payment to the Owner's Representative, with a copy to the Design-Builder, together with the Project Architect's and Owner's Independent Representative certification that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, the Design-Builder shall make the required corrections and resubmit the Application for Payment for processing in accordance with Section 6.2.1.2.

6.3 Owner's Duty to Pay

6.3.1 The Owner shall have no duty to pay the Design-Builder except on receipt by the Owner's Representative of a complete Application for Payment that has been certified by the Owner's Independent Representative. Based upon Applications for Payment submitted to the Owner and certified by Owner's Architect, Owner will make progress payments to Design-Builder in proportion to the services and Work performed, as provided below

6.3.2 As set out in Texas Government Code §2251.001, *et seq.*, for a certified Application for Payment received by the Owner not later than the twentieth (20th) day of a month, the Owner will make payment of the amount due, less retainage, to the Design-Builder not later than the tenth (10th) day of the following month. If a certified Application for Payment is received by the Owner after the application date fixed above, payment in such amount as determined by Owner will be made by the Owner not later than fifty-one (51) days after the Owner receives the Application for Payment.

6.4 Retainage

6.4.1 The Owner shall withhold from each progress payment, as retainage, five percent (5%) of the total amount otherwise payable for Construction Work performed and material in place.

6.4.1.1 Any request for reduction or release of retainage shall be accompanied by written consent of the Design-Builder's Surety.

6.5 Reduction to Cover Loss

6.5.1 Subject to the requirements and limitations of Texas Government Code Chapter 2251, the Owner may reduce any Application for Payment prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Design Builder, including, but not limited to:

6.5.1.1 Defective work not remedied;

6.5.1.2 Damage to work of a separate contract;

6.5.1.3 Failure to maintain scheduled progress or reasonable evidence that the work will not be completed within the contract time;

6.5.1.4 Failure to comply with the requirements of Texas Government Code Chapter 2258 (Prevailing Wage Law);

6.5.1.5 Persistent failure to carry out the work in accordance with the Contract Documents;

6.5.1.6 Reasonable belief that the work cannot be completed for the remainder of the Contract Price;

6.5.1.7 Assessment of fines for violations of Prevailing Wage Rate laws; or

6.5.1.8 Failure to include the appropriate amount of retainage for that periodic payment.

6.6 Title to all material and Work covered by progress payments transfers to the Owner upon payment. Transfer of title to Owner does not relieve the Design-Builder of the sole responsibility for the care and protection of materials and work upon which payments have been made, or the restoration of any damaged work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.

6.7 Progress payments to the Design-Builder shall not release the Design-Builder or his surety from any obligations under this Contract.

6.8 Upon the Owner's request, proof of the status of Subcontractor's accounts shall be furnished in a form acceptable to the Owner.

6.9 The Design-Builder, in requesting payment for materials, shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials.

6.10 For purposes of Texas Government Code 2251.021(a)(2), the date the performance of services is completed is the date when the Owner's Representative approves the Certified Application for Payment.

6.11 Off-Site Storage

6.11.1 With prior approval by the Owner and in the event Design-Builder elects to store materials at an off-site location, he shall abide by the following conditions:

6.11.1.1 Materials shall be stored in a BONDED COMMERCIAL Warehouse.

6.11.1.2 The Design-Builder shall provide separate Insurance Coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the project site. Copies of duly authenticated Certificates of Insurance, made out to insure the BOARD OF TRUSTEES OF SILVERTON

INDEPENDENT SCHOOL DISTRICT, must be filed with the Owner's Representative.

6.11.1.3 Inspection by Owner's Representative is allowed at any time. The Owner's Representatives must be satisfied with the security, control, maintenance, and preservation measures.

6.11.1.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials, which have been approved through the submittal process, are to be stored in the area.

6.11.1.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Drawings and Specifications requirements regardless of any previous progress payment made.

6.11.1.6 With each monthly payment estimate, the Design-Builder shall submit a report to the Owner's Representative, Project Architect, and Owner's Independent Representative listing the quantities of materials already paid for still stored in the off-site location.

6.11.1.7 Warehouse records, receipts and invoices shall be made available to Owner's representatives, upon request, to verify the quantities and their disposition.

6.11.1.8 In the event of Contract termination or default by Design-Builder, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by the Owner's Representative.

6.11.1.9 The full provisions of PERFORMANCE AND PAYMENT BONDS on this Project shall cover the materials off-site in every respect as though they were stored on the Project Site.

6.12 Final Payment

6.12.1 Final payment, constituting the entire unpaid balance of the Contract Sum (less any offsets or damages as provided in the Contract Documents), will be made by the Owner when (1) the Work has been fully performed by the Design-Builder as determined by Owner and/or Owner's Independent Architect, and (2) the completed Project has been accepted by the Silverton ISD Board of Trustees.

6.12.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner:

- (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project have been paid or otherwise satisfied,
- (2) a certificate evidencing that the required insurance will remain in force after final payment and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner,
- (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Owner,
- (4) consent of surety to final payment,
- (5) other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the this Contract, to the extent and in such form as may be designated by the Owner, and

(6) written warranties and other documents required by the Contract and submitted to the Owner's Superintendent of Schools.

6.12.3 Acceptance of final payment by the Design-Builder shall constitute a waiver of all claims by the Design-Builder, except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

Article 7 Closing Inspections

7.1 Substantial Completion Inspection

7.1.1 When the Design-Builder considers a Project Substantially Complete, the Design-Builder shall inspect the Project for compliance with the Contract Documents and notify the Owner's Representative and the Project Architect in writing that the Work will be ready for Substantial Completion Inspection on a date certain. The Design-Builder shall include with this notice a copy of its updated inspection list marked to indicate corrected items plus a list of items to be completed or corrected prior to final inspection which the Design-Builder recognizes exist but believes do not prevent the Work or part thereof from being substantially complete, and shall request a substantial completion inspection for the Project. The failure to include any items on such list does not alter the responsibility of the Design-Builder to complete all work in accordance with the Contract Documents. The Owner's Independent Architect will review the Design-Builder's list of items and either will schedule the requested inspection or will inform the Design-Builder in writing that such an inspection would be premature because the Work is not sufficiently advanced or that conditions are not as represented on the Design-Builder's list.

7.1.1.1 Prior to the substantial completion inspection, the Design-Builder shall furnish to the Owner's Representative a copy of the As-Built blueline prints and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, systems and like items. If the Design-Builder does not furnish these requirements and the Owner's Representative must of necessity otherwise obtain this information and data, the costs for obtaining it will be deducted from payments otherwise due the Design-Builder. The substantial completion inspection will be jointly conducted by the Owner's Architect, the Owner's Representative and the Design-Builder.

7.1.1.2 On the date indicated by Design-Builder, or as soon thereafter as is practicable, the Owner's Representative, the Owner's Independent Architect, and the Design-Builder shall inspect the work and if the Owner's Representative and the Owner's Independent Architect determine that the Work is Substantially Complete, a Certificate of Substantial Completion shall be issued by the Owner's Independent Architect and Design-Builder, fixing the date of Substantial Completion. The Owner's Independent Architect will provide with this certificate a list of items to be completed prior to final inspection (the Pre-Final Punchlist). This list may include additional items not included on the Design-Builder's list,

which are deemed necessary by the Owner's Architect or by the Owner's Representative to correct or complete prior to Final Inspection.

7.2 Final Project Inspection. The Design-Builder shall fully complete the list of items listed on the Pre-Final Punchlist prior to Final Inspection of a Project. Unless otherwise specified in Special Conditions, or otherwise agreed in writing by the parties, the Design-Builder shall complete this work within 30 days of the certified date of Substantial Completion. When the Design-Builder has completed the Pre-Final Punchlist, he shall give written notice to the Owner's Representative and the Owner's Independent Architect that the Work will be ready for Final Inspection on a date certain. This notice shall be accompanied by a copy of Design-Builder's updated Punchlist indicating resolution of all items. On this date, or as soon thereafter as is practicable, the Owner's Representative, the Owner's Independent Architect, and the Design-Builder shall inspect the Work and Owner's Independent Architect shall submit to the Design-Builder a list of items which the Owner's Representative and the Owner's Independent Architect have determined to require correction or completion before the Work will be accepted by the Owner (the Final Punchlist).

7.3 The Design-Builder shall correct or complete all items on the Final Punchlist before Acceptance and Final Payment. Unless otherwise agreed in writing by the parties, the Design-Builder shall complete this work within seven (7) days of receiving the Final Punchlist. Upon completion of the Final Punchlist, the Design-Builder shall notify the Owner's Architect and Owner's Representative in writing, stating the disposition of each Punchlist item, and the Owner's Architect and Owner's Representative shall promptly inspect the completed items. When the Final Punchlist has been completed, and the Contract is fully performed as to a Project, according to the Contract Documents, and is acceptable to the Owner, the Owner's Architect shall issue a certificate fixing the date of Final Completion. Final Completion of all work shall be a condition precedent to the Design-Builder's right to receive Final Payment.

7.4 Annotation. Any certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by the Owner.

7.5 Purpose of Inspection. Inspection by the Owner's Representative and Owner's Independent Architect is for the purpose of determining the completion of the Work, and does not relieve the Design-Builder of its overall responsibility for completing the Work in a good and workmanlike fashion, in compliance with the Contract Documents. Failure of the Owner's Representative or Owner's Independent Architect to identify Work that is not in compliance with the Contract Documents, or which is defective in operation or workmanship, or acceptance of the Work with Punchlist items left incomplete, does not constitute a waiver of such a defect or of the Owner's rights under the Contract Documents or relieve the Design-Builder of its warranties contained in the Contract Documents.

7.6 Phased Completion. The provisions of the Contract Documents relating to Substantial Completion and Final Payment (except as to project GMP or final GMP) apply independently to each designated element or part of the Project. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole shall be the date on which

the last element or part of the Work to be completed is certified as Substantially Complete, and Final Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Finally Complete.

Article 8 **Time**

8.1 Obligation to Achieve the Contract Times. Design-Builder agrees that it will commence performance of the work and achieve the Contract Times in accordance with Article 5 of the Agreement.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder may be entitled to an appropriate adjustment of the Contract price provided, however, that the Contract price shall not be adjusted for those event set forth in Section 8.2.1 above that are beyond the control of both Design-Builder and Owner, including Force Majeure Events such as war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated and other acts of God.

Article 9 **Changes to the Contract Price and Time**

9.1 Change Orders

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price, including any changes in the amount of Design-builder's compensation; and,

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder

shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revision to the Contract Documents.

9.2 Work Change Directives

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible, the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in Work. Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract time(s) and do not materially and adversely affect the work, including the design, quality, performance and workmanship required by the Contract documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 costs, fees and any other markups set forth in the Agreement; and,

9.4.1.4 if an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Owner issues a Work Change Directive, the cost of the change of the work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and elections to the Work is an increase in the contract Price, overhead and profit shall be calculated on the basis of the net increase to the contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, there shall be no overhead or profit adjustment to the Contract Price. Design-Builder

shall maintain a documented, itemized accounting evidencing the expense and savings associated with such changes.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of work or proposed changes to the work, Owner and Design-builder shall resolve the disagreement pursuant to Article 10 hereof.

9.5 Emergencies. In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief. If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Program, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in the Agreement. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, which is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative and Owner's Architect.

10.2.3 If after meeting these representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator selected by the parties. Each party shall bear one-half (1/2) of the mediator's fees and expenses.

10.2.4 If mediation is unsuccessful, either Owner or Design-builder may initiate litigation. Nothing herein shall obligate the Parties to engage in arbitration.

10.3 Duty to Continue Performance

10.3.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

Article 11 **Stop Work and Termination**

11.1 Owner's Right to Stop Work

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Program.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by Owner.

11.2 Owner's Right to Perform and to Terminate

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights, take action as set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such

problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, the Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.2.5 The Owner may, at its option and at any time, terminate the whole or any part of this Agreement for the convenience of the Owner. Design-Builder agrees that upon any such termination, the Design-Builder's sole remedy shall be payment of full value for all Work properly performed up to the time of termination, plus reasonable profit thereon, less all payments Design-builder has previously received on account of such Work performed. It shall be a condition precedent for such payment, that Owner has received an application for payment from Design-Builder for the Work Design-Builder performed prior to notice of termination. Design-Builder agrees to waive all claims for damages, including lost or anticipated profits from remaining Work, arising from or related to any such termination by Owner.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work if after providing notice set forth in section 11.3.2, Owner fails to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 If the event set forth in Section 11.3.1 above occur, Design-Builder shall provide Owner with written notice that Design-Builder will stop work unless said event is cured

within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 10.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under section 11.1.3 above.

Article 12 **Miscellaneous**

12.1 Assignment. Neither Design-Builder nor owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

12.2 Successorship. Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Severability. If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.4 No Waiver. The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.5 Headings. The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.6 Amendments. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representation of each party.

12.7 Authority of the Board. Only Owner's Board of Trustees, by majority vote, has the power to enter into a contract, to execute a Change Order requiring an increase in the contract sum, or to agree to an extension to the contractual completion date. The Owner's Board shall designate, as appropriate, an authorized representative or representatives to act on its behalf during the course of construction. Such authorized representatives shall have authority to act on behalf of the Owner concerning decisions which do not require majority vote of the Board of Trustees. Such authorized representatives shall also bring recommendations to the Board of Trustees on any matter that requires the Board's approval. In the event that changes in the scope of the Work are required before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representatives may approve construction Change Orders that do not exceed \$ [REDACTED] in increased costs to a Project GMP. Any such change shall be confirmed in writing between the Design-Builder and the Board's authorized representatives and notice of such approved changes shall be given to the Board at its next regular meeting. The Board will act as soon as reasonably possible to avoid undue delays in the construction completion date.

12.8 Immigration Law. Design-builder represents and warrants that all contractors and subcontractors working on this project for Owner will comply with all applicable federal and state immigration laws, and verify all employees' eligibility to work in this country. Further, Design-Builder shall ensure that all contractors and subcontractors will indemnify the Owner for any damages and legal fees that the Owner incurs as a result of Design-builder's and/or subcontractor's failure to comply with applicable immigration laws.

12.9 Prevailing Wage Rates.

12.9.1 Design-Builder, Design-Builder's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing rate of per diem wages for work of a similar character where the Project is located, as detailed in the "Minimum/Prevailing Wage Schedule" provided herein or in the Project Manual. Wages listed are minimum rates only.

However, no claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein. Texas Government Code §2258, et seq.; Texas Labor Code §62.0512, et seq.

12.9.2 Design-Builder shall forfeit, as a penalty to the Owner, \$60 for each laborer, worker or mechanic employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract Documents

12.9.3 Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Design-Builder, and of Design-Builder's Subcontractors and Sub-subcontractors.

12.9.4 In executing the Work under the Contract Documents, Design-Builder shall comply with all applicable state and federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety and minimum wages.

12.9.5 If no "minimum wage schedule" is provided herein or in the Project Manual, the Design-Builder shall use the wage rates determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 USC Section 3141, which can be accessed on the internet at <https://sam.gov/content/wage-determinations>, or determined by any local contractor association, whichever is less.

12.10 No Israel Boycott Certification. Pursuant to Texas Government Code, Chapter 2271, as amended and re-designated from Chapter 2270, if Design-Builder 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 Design-Builder represents and warrants to the Owner that the Design-Builder does not boycott Israel and will not boycott Israel during the term of this 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.

12.11 No Energy Company Boycott Certification. Pursuant to Texas Government Code, 2276, if Design-Builder 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 Design-Builder represents and warrants to the Owner that the Design-Builder does not boycott energy companies and will not boycott energy companies during the term of this Agreement. "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.

12.12 No Discrimination of Firearm Entities or Trade Associations Certification. Pursuant to Texas Government Code, Chapter 2274, if Design-Builder 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 Design-Builder represents and warrants to the Owner that the Design-Builder 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. 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.

12.13 Companies Engaged in Business with Iran, Sudan, or a Foreign Terrorist Organization. In accordance with Texas Government Code, Chapter 2252, Subchapter F, Owner 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 execution of this Contract, Design-Builder certifies to Owner that it is not a listed company under any of those Texas Government Code provisions. Design-Builder hereby voluntarily and knowingly acknowledges and agrees that this Contract shall be null and void should facts arise leading the Owner to believe that the Design-Builder was a listed company at the time of this procurement.

12.14 Design-Builder is not an Abortion Provider. By entering into this Agreement, Design-Builder verifies that it is not an abortion provider or an affiliate of abortion providers.

12.15 No Assistance for Employee involved in Sexual Misconduct with a Student or Minor. Design-Builder certifies and agrees that it shall not assist an employee, contractor or agent of the Owner or of any other school district in obtaining a new job if the consultant 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.

12.16 No Assistance with Social Transitioning. Design-Builder represents and warrants that it shall ensure that all its actions in specific performance of this Agreement shall comply with federal and state law that there are only two sexes and its employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, assist a student with social transitioning. Social transitioning means a person’s transition from the person’s biological sex at

birth to the opposite biological sex through the adoption of a different name, different pronouns, or the expressions of gender that deny or encourage a denial of the person's biological sex at birth.

12.17 No Instruction Relating to Sexual Orientation or Gender Identity. Design-Builder represents and warrants that its employees, officers, representatives, subcontractors, and agents shall not, in performance of this Agreement, provide instruction, guidance, activities, or programing regarding sexual orientation and gender identity to students of the Owner.

12.18 No Diversity, Equity, or Inclusion. Design-Builder represents and warrants that its employees, officers, representatives, subcontractors, and agents shall not, in performance of this Agreement, provide instruction, guidance, activities, or programing regarding diversity, equity, and inclusion, and shall not assign to another individual diversity, equity, and inclusion duties.

12.19 No Acts Prohibited Under Texas Education Code. Design-Builder represents and warrants that its employees, officers, representatives, subcontractors, and agents shall not, in performance of any contract, provide instruction, guidance, activities, or programing that is prohibited by Texas Education Code §28.022(a)(4).

12.20 Immediate Termination for Violations of Certifications, Representations, or Warranties. Design-Builder acknowledges and agrees that the Owner may terminate this Agreement immediately for cause if it is discovered that the Design-Builder misrepresented by false affirmation any of the certifications, representations, or warranties required herein or in performance of this Agreement if Design-Builder has intentionally or knowingly violated any provision set forth in such certifications, representations, or warranties herein or engaged in any conduct prohibited by law. See Owner's Board Policy CJ(LOCAL) and EMB(LOCAL) & (LEGAL).

12.21 Contracting Information. By entering into this Agreement, pursuant to Texas Government Code 552, Subchapter J, the Design-Builder 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 Design-Builder 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 Design-Builder that Design-Builder provide that information to the Owner.

Further, the Design-Builder must:

- i. 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
- ii. Promptly, within four business days, provide to the Owner any requested contracting information that is in the custody or possession of the Design-Builder upon request of the Owner; and,
- iii. On completion of the Contract, either:

- A. Provide to the Owner at no cost all contracting information related to the Contract that is in the custody or possession of the Design-Builder; or
- B. Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.
- C. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Design-Builder agrees that the contract can be terminated if the Design-Builder knowingly or intentionally fails to comply with the requirements of that subchapter.
- D. Further, under Texas Government Code Section 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.
- E. If a Design-Builder fails to provide to the Owner the requested information, Texas Government Code Section 552.373 requires the Owner to notify the Design-Builder in writing of the failure and allow 10 business days to cure the violation. Owner may terminate the Contract if Design-Builder fails to remedy the failure, Owner determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

12.22 Equal Employment Opportunities. Design-Builder acknowledges that Owner, as an independent school district, is a political subdivision of the State of Texas and has certain requirements concerning equal employment and affirmative action under state and federal law, and shall comply with all applicable laws, regulations and special requirements under such federal and state laws, and the Contract Documents regarding equal employment opportunity and affirmative action programs.

Design-Builder and Design-Builder's Subcontractors, if any, shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Design-Builder shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth policies of nondiscrimination.

DATED: _____, 2026.

OWNER:

SILVERTON INDEPENDENT
SCHOOL DISTRICT

DESIGN-BUILDER:

By: _____
Michelle Francis, Superintendent

By: _____

SAMPLE

Appendix 1

Definitions

Construction Documents are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by these General Conditions of Contract.

Day or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

Design-Build Team is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

Design Consultant is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A *Design Sub-Consultant* is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

Design Submission means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

Final Completion is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list and the submission of all documents set forth in the Construction Documents.

Force Majeure Events are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

GMP Proposal or *Proposal* means that proposal developed by Design-Builder in accordance with the Silverton Independent School District Design-Build Agreement executed by Silverton Independent School District and _____ [insert name of D-B].

Hazardous Conditions are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

Project Architect is person employed and designated by the Design-Builder to be responsible for overseeing the architectural aspects of the development of the design, production of the construction documents, plans and specifications for the Owner's Program. The position generally involves coordinating the needs of the Owner, and the design and technical staff, and outside consultants, including without limitation structural, electrical, civil and mechanical engineers, interior designers and landscape architects and identified in the Silverton Independent School District Design-Build Agreement executed by Silverton Independent School District and _____ [insert name of D-B].

Owner's Independent Architect or Owner's Independent Representative is the person employed by the Owner pursuant to Texas Government Code Section 226.305 and identified in the Silverton Independent School District Design-Build Agreement executed by Silverton Independent School District and _____ [insert name of D-B]

Owner's Project Criteria or Design Criteria are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

Site is the land or premises on which the Project is located.

Subcontractor is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

Sub-Subcontractor is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

Substantial Completion or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes as set out in the Silverton Independent School District Design-Build Agreement executed by Silverton Independent School District and _____ [insert name of D-B].

Work is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

EXHIBIT B

DESIGN CRITERIA PACKAGE

****End of Section Six****

Exhibit B

Design Criteria Package

The Silverton Independent School District has prepared this Design Criteria Package for the **RFQ 2026-02** for Design-Build services related to the Silverton Independent School District 2026 Bond Program Projects.

The scope shall include but not limited to the following:

- Survey services including, but not limited to: boundary, typographic, location of existing trees, as built, and final layout.
- Comprehensive architectural / engineering services including, but not limited to: civil, structural, mechanical, electrical, plumbing, fire protection, stormwater.
- Comprehensive project scheduling and project management.
- Comprehensive environmental evaluation, geotechnical services, and utility locations.
- Compliance with all applicable governing codes and laws, regulations, and ordinances including but not limited to site, environmental, building and landscaping, and Commissioner of Education Rules Concerning School Facilities as set forth in 19 TAC 61.1040.
- Compliance with all required site, building, and regulatory permitting.
- Compliance with Americans with Disabilities Act (ADA) and Texas Accessibility Standards (TAS).
- As-Builts and final documents in Autodesk, AutoCAD 2025 Format.
- Complete technical specifications, shop drawings, and exhibits.

The Silverton Independent School District will use a Design-Build method of project delivery as follows:

- Design-Build is a project delivery method by which an owner contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility. Gov't Code 2269.301.
- The delivery method applies only to a facility that is a building or associated structure, including an electric utility structure. It does not apply to:
 1. A highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and waste water distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction: or
 2. A building or structure that is incidental to a project that is primarily a civil engineering construction project.
Gov't Code §2269.302
- An owner may use the Design-Build method for construction, rehabilitation, alteration, or repair of a building or associated structure only as provided by Government Code Chapter 2269, Sub-chapter G. In using that method, the District shall enter a single contract with a Design-Build firm for the design and construction of the building or associated structure. Gov't Code §2269.303.

Design-Build Firm

- A Design-Build firm under this policy must be sole proprietorship, partnership, corporation, or other legal entity of team that includes and architect or engineer and a construction contractor. Gov't Code §2269.304

Architect / Engineer

- The District has designated D. Scott Stark, 209 SW 15th Ave, Amarillo, Texas 79191, as its architect independent of the design-build firm to act as the District's representative for the duration of the project. Gov't Code §2269.305

Requests For Qualifications

- The District does not require offerors to submit architectural or engineering designs as part of the proposal or a response to a request for qualifications. Gov't Code §2269.306(d)

Making Rankings Public

- Not later than the seventh day after the date the contract is awarded, the District shall make the proposed rankings public. Gov't Code §2269.308(d)

Design

- After selection of the Design-Build firm, that firm's architects or engineers shall submit all design elements for review and determination of scope compliance to the District or the District's architect or engineer before or concurrently with construction. Gov't Code §2269.309

Final Construction Documents

- The Design-Build firm shall supply a set of construction documents for the completed project to the District at the conclusion of the construction. The documents must note any changes made during construction. Gov't Code §2269.310

Payment or Performance Bond

- A payment or performance bond is not required and may not provide coverage for the design portion of the Design-Build contract with the Design-Build firm under this policy.
- If a fixed contract amount or guaranteed maximum price has not been determined at the time of the Design-Build contract is awarded, the penal sums of the performance and payment bonds delivered to the District must each be in an amount equal to the construction budget, as specified in this design criteria package. The Design-Build firm shall deliver the bonds no later than the tenth day after the date the Design-Build firm executes the contract with the District, unless the Design-Build furnishes a bid bond or other financial security acceptable to the District to ensure that the Design-Build firm will furnish the required performance and payment bond before construction begins. Gov't Code §2269.311

Section 1: Design Criteria In General

1.01 Purpose

This document provides the criteria for the design adaptation and construction of the renovations and additions to Silverton Independent School District to include the following:

A. Site and Building

1. New and renovated athletic facilities.
2. AG facility renovations.

1.02 Site

A. Silverton High School, 700 Loretta Street, Silverton, TX 79257

1.03 Intent

The intent herein is to list the minimum design criteria necessary for the renovations and additions of the Silverton High School within the budget and scope as established in the 2026 Silverton Independent School District Bond approval.

1.04 Basis Of Design

This Design Criteria Package presents users information, including but not limited to, department information and in specific cases, product data, as a basis of design – it is not a specification, prescriptive checklist, final program, nor substitute for the work indicated herein or site visit(s) prior to submission.

The Design Criteria Package is for illustrative purposes and is not intended to replace the professional judgement by competent licensed Professionals, including but not limited to, Architects, Engineers, Landscape Architects, Graphic Specialists, General Contractors, Subcontractors, and Fabricators, in proposing the full scope of work needed and the budget required.

1.05 Design-Build Team Requirements

The Design-Build team to be selected for this project shall be required to have suitable personnel and equipment, resources, financial stability, and experience to accomplish the project objectives. The Design-Build team shall be responsible for every phase of work and every task and activity, including but not limited to, project management, design, engineering, construction, fabrication, and construction administration, required to execute the complete scope of work in its entirety. The Design-Build team shall be required to conduct all testing, obtain all approvals, and provide systems training for total occupancy in accordance with the submitted proposed price and schedule.

- 1.06 Scheduling and Project Coordination
Scheduling and coordination of the project must organize long lead times, and potential delays in the most efficient and suitable manner acceptable to the Silverton Independent School District hours of operation.
- 1.07 Zoning Of The Site
All respondents to this RFQ are to confirm the existing zoning for each site with the appropriate regulatory agencies.
- 1.08 FEMA Floor Zone
All respondents are to confirm the FEMA Zone.
- 1.09 Survey And Verification Of Site Conditions
Design-Build services shall include property surveys, including but not limited to, boundaries, topographic, existing trees, as well as the verification of all existing conditions, including but not limited to, site drainage, and bathymetries for utility coordination, environmental compliance, and regulatory permitting to construct of all site amenities necessary to complete this project, including needed upgrades, repairs, and/or replacement of indicated infrastructure, in its entirety, as deemed necessary by the Silverton Independent School District. Design-Build services shall also include surveying for As-Builts and Final Layout.
- 1.10 Land Clearing, Site Work, Demolition, Removal, Grading, And Landscaping
All land clearing, site work, demolition, removal, grading, and landscaping made necessary to achieve the final design for this project shall be included by the respondents.
- 1.11 Compliance With Governing Codes And Life Safety Codes
All respondents to this RFQ shall have a complete and thorough understanding of the laws and regulations regarding public life safety and as well demonstrated experience, including but not limited to, governing building/city codes, including Commissioner of Education Rules Concerning School Facilities as set forth in 19 TAC 61.1040, plan/code review processes, regulatory agency reviews, and required site improvements. All respondents to this RFP shall also have a complete and thorough understanding of the submittal requirements and processes of the City of Silverton as well as required approval for design, fabrication, and construction.
- 1.12 Compliance With The Americans With Disability Act And The Texas Accessibility Standard
All respondents to this RFQ shall have a complete and thorough understanding of the regulations and requirements of the Americans With Disability Act (ADA) as well as the Texas Accessibility Standards (TAS).

1.13 Construction And Energy Savings

All new construction for this project shall also make the best use of all applicable and sustainable materials and methodologies to reduce operating costs including, but not limited to, energy efficient windows, lighting, HVAC equipment, insulation, and appliances. Additionally, all new parts of the building envelope shall meet the minimum requirements of the 2018 International Energy Conservation Code.

1.14 Use Of New And Emerging Technologies

All new construction shall consider the possible use of emerging and new technologies and commercially available products if they can be proven to result in the successful and satisfactory design and construction of the project.

Section 2: Basis of Design

2.01 RFQ Response

2.02 The Design-Build team shall demonstrate experience to include this and all attachments and associated exhibits. Design and construction scopes shall include all, but not limited to, preliminary construction pricing at 30%, 60%, 90%, and 100% design documents and Utility submission at 60%.

2.03 The Design-Build team shall demonstrate experience and ability to coordinate this project proposal in response to the Silverton Independent School District scheduling criteria as recommended for potential delays, and general phase work, in a least disruptive sequence to Silverton Independent School District continual operations; that shall remain open and active, during design and construction most efficiently.

2.04 The Design-Build team shall demonstrate previous success in the delivery of previous School Project work that meet multiple objectives and goals included in this RFP.

2.05 Estimated Budget for Construction: \$10,400,000.00

2.06 Projected Estimated Start Date of Construction: June 2026.

2.07 Projected Estimated Construction Duration: June 2028.

2.08 Project Scope:

New Track & Field
Turf Football Field
New PE/Practice Basketball Gymnasium
Update Football Locker Rooms
New Weight Room
Convert PE Gymnasium to Practice Facility
Update AG Welding Shop

Section 3: Existing Conditions

- 3.01 The Design-Build team shall be required to coordinate the construction work with the adjacent Silverton Independent School District facilities including, but not limited to, Silverton High School.

Section 4: Exhibits

- 4.01 Exhibits have been made available by the Silverton Independent School District and as such are to be part of this RFQ.

- 4.02 The Silverton Independent School District reserves the right to add exhibits by addendum if deemed necessary.

- 4.01 Objectives and Expectations

- A. Silverton High School

- a. Additions shall create a pleasing exterior by either matching the existing construction materials or be a contrasting element or elements.
- b. New interior work shall make a pleasing transition to existing finishes to remain.

- C. All Buildings

- a. Design-Build Team shall strive to work harmoniously with the designated Silverton Independent School District staff as well as the selected Independent Architect working directly for the District.
- b. The Design-Build process shall move along in a timely manner with any potential delays provided to the District's designated staff and the Independent Architect.
- c. The Design-Build Team shall request information needed from the District in a timely manner in written form.
- d. The Design-Build Team shall keep minutes for all meetings and phone conversations.
- e. Provide all review drawings to the District designated staff and the Independent Architect in PDF form.
- f. The Design-Build Team shall provide a written project status update on a monthly basis to the District designated staff and the Independent Architect.