

ATTACHMENT II

Sample Contract For Maintenance Shop Building Men's Toilet And Locker Room Renovation Project

STATE OF TEXAS §
(SAMPLE CONTRACT)
COUNTY OF ORANGE §

**CONTRACT FOR RENOVATION OF THE ORANGE COUNTY DRAINAGE DISTRICT
MAINTENANCE SHOP BUILDING MEN’S TOILET AND LOCKER ROOM**

The Parties to this contract are the Orange County Drainage District ("District"), a special law district and political subdivision of the State of Texas, and ("Contractor"), District and Contractor shall sometimes be jointly referred to herein as the "Parties." In consideration of the mutual promises, covenants and agreements set forth herein, the Parties agree as follows:

- 1. GENERAL PROVISIONS, CONTRACT DOCUMENTS AND DEFINITIONS**
- 1.1. Architect.** This term shall mean Mr. Cade L. Spell, AIA, Long Architects, Inc. as the architect-in-charge (or his designee or successor) who is providing the District with architectural services and periodic observation and inspection of the work, sufficient to determine the date of substantial completion and final completion as provided for in Article 7 below.
- 1.2. Attachments.** This Contract has three (3) Attachments. These Attachments include: (1) the Scope of Work (Attachment "A"), (2) Contractor's Declarations Pages evidencing its various insurance coverages (Attachment "B"), and (3) the Contractor's Bid Proposal submitted in response to the District's request for quotes (Attachment "C").
- 1.3. Claims and Disputes.** This term shall mean any claim, dispute, protest and/or controversy between the Parties concerning the Contract or Project, or any related matters thereof which shall be processed and determined exclusively pursuant to the provisions of Article 13 relating to claims and disputes.
- 1.4. Contract.** This term shall mean the Contract for renovation of the Orange County Drainage District Maintenance Shop building men’s toilet and locker room (hereinafter the "Contract"), all Attachments as set forth in Section 1.2 of this Contract, The Contractor’s Bid Proposal and any written change orders properly executed under the terms and conditions of the Contract. From time to time, the Contract may also be referred to as the "Contract Documents." The Contract represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents, taken as a whole, are complementary and what is required by any one document shall be as binding as if required by all.
- 1.5. Contractor.** This term shall mean _____, its agents, and employees.
- 1.6. Day.** This term shall mean a calendar day, unless otherwise specifically stipulated.
- 1.7. District.** This term shall mean the Orange County Drainage District (the "District"), a special law governmental and political subdivision of the State of Texas established pursuant to Article 8280-292 (Vernon's Texas Annotated Statutes) which is the owner of the Project.

- 1.8. Effective Date, Term, and Renewals.** The effective date of this Contract is the date upon which a last Party signs it. The term of this Contract shall begin on the effective date and continue day to day thereafter until the Scope of Work has been completed as determined by the Architect as well as all other obligations of the Parties set forth in this Contract have been fulfilled.
- 1.9. Intent.** The intention of the Parties is to include, except as specifically excluded in writing, all labor, equipment, materials, facilities, and services necessary for the proper execution and completion of the Scope of Work attached to this Contract as Attachment "A".
- 1.10. Notice to Proceed.** A written notice issued by the Architect or the District that commences the time during which the Contractor may begin performance of the Scope of Work. The Contractor shall be obligated to commence the work within fourteen (14) calendars days from the date that the District issues the notice to proceed to the Contractor. Prior to beginning any of the work set forth in the Scope of Work, all required submittals as discussed in the Scope of Work shall be approved. See, Attachment "A".
- 1.11. Project.** The term "Project" shall mean the Scope of Work attached to the Contract as Attachment "A" and as reflected in the Contractor's Bid Proposal attached to this Contract as Attachment "C."
- 1.12. Scope of Work.** This term shall mean all the goods, materials, and services to be provided by the Contractor pursuant to the Contract, as described in Attachment "A" to this Contract, as modified by the Contractor's Bid Proposal attached as Attachment "C", along with any change orders as may be lawfully executed by the Parties. From time to time, the labor and services furnished by the Contractor in accordance with the Scope of Work may be simply referred to as the "work."
- 1.13. Status as Independent Contractor.** This Contract does not create an employee-employer relationship between the Parties. The Contractor is an independent contractor of the District and will be in control of the means and the method in which the Scope of Work is performed. As an independent contractor, the Contractor will be solely responsible for payment of all federal, state, and local income tax and employment taxes arising from this Contract, and the Contractor agrees to indemnify and hold harmless the District from any obligations relating to such taxes. The District will not make deductions from payments due for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes for which the Contractor is responsible.
- 1.14. Subcontractor.** This term shall mean a person or entity hired or retained by the Contractor to perform various tasks included within the Scope of Work, or who contracts with another Subcontractor to perform various tasks included within the Scope of Work. The Contractor shall not be relieved of any obligations and/or performance under the terms of the Contract by its use of a Subcontractor to perform any part of the Scope of Work.
- 1.15. Substantial Completion.** This term means the stage in the progress of the work when the work (or designated portions thereof) may still require minor modifications or adjustments but, in the District's opinion, the work has progressed to the point such that all parts of the Scope of Work under consideration are fully operational and usable for intended purposes, as evidenced by a certificate of substantial completion issued by the Architect and approved by the District.

2. COMPENSATION BASED ON CONTRACTOR'S PROPOSAL (ATTACHMENT "C")

2.1. Bid Proposal. The District selected the Contractor based upon its proposal attached to this Contract as Attachment "C" To the extent that any provision of this Contract or Attachment specifies otherwise, this Article 2 shall control.

2.2. Amount of Compensation. The District shall pay the Contractor, for the satisfactory performance of the Work and completion of the Project, the sum of _____ Dollars (\$_____) in accordance with the terms of and conditions of this Contract. The District shall further pay the Contractor such additional amount that the District and Contractor agree upon in a written change order relating to any other matter that is agreed upon by the Parties.

3. DISTRICT OBLIGATIONS

3.1. District's Rights and Obligations. The District's rights and obligations under the Contract Documents are set forth and described in this Article 3, and as well other related sections of this Contract.

3.2. Copies Furnished — Plans and/or Specifications. The District, by and through its Architect, shall furnish technical specifications, plans, drawings, and other documents in its possession as requested by Contractor that relate to the Scope of Work as well as other information necessary to the Contractor, so long as it is available to the District or the Architect or under the control of either of them. All communication with the Contractor shall be through the Architect unless otherwise specified by the District in a writing signed by its General Manager.

3.3. General Administration. Unless otherwise specified in writing, the Architect will attend to the general administration of the Contract and shall be the District's official representative during the performance of the Scope of Work as well as for any change orders to be executed by the Architect, with the consent of the District, as provided in Article 6 of this Contract. The District assumes no responsibility for any understanding given or representation made orally by any person prior to the execution of this Contract unless such understanding(s) or representation(s) are also expressly stated in the Contract or its Attachments or a properly executed written change order. The District assumes no responsibility for any conclusions or interpretations made by the Contractor even where the Contractor has relied upon oral representations of the District, Architect, or any of their agents prior to the execution of this Contract. A failure by the Contractor to become acquainted with all available information will not relieve Contractor from responsibility for properly estimating the difficulty or cost of successfully performing the work including all mutually agreed change orders.

3.4. Authority of the Architect. The Architect has the authority to act on behalf of the District to the extent provided for in the Contract, unless otherwise modified by written instrument signed by the District's General Manager that will be shown, and given, to the Contractor. The District's instructions to the Contractor will generally be issued through the Architect, except that the District reserves the right to issue instructions directly to the Contractor through its General Manager, or other representative as may be designated in writing by the General Manager and delivered to the Contractor.

- 3.5. Instructions Affecting Payment or Scope of Work.** All instructions affecting the contract sum, payment, contract time, Scope of Work, or contract interpretation, shall be confirmed expeditiously in a writing with copies furnished to the Architect as well as the Contractor regardless of who issues the instruction. No deviation from any previously approved Scope of Work shall be allowed except as directed by the Architect pursuant to a lawfully executed change order.
- 3.6. Interpretation of Contract Documents.** Unless otherwise set forth in a change order or other writing signed by the General Manager, the Architect, in the exercise of his professional judgement, will be the final interpreter of the Scope of Work. The Architect may, at his or her option, consult with the District for additional consultation regarding interpretation of the Scope of Work. However, all such interpretations shall be consistent with the intent of and reasonably reflect the usual and ordinary meaning of the terms set forth in the Scope of Work as well as the Contract in general.
- 3.7. Access to and Inspection of the Scope of Work.** The Contractor shall provide sufficient, safe, and reasonable access at all reasonable times for the Architect and/or any officer, agent, or employee of the Architect or District for the observation and/or inspection of the Contractor's work. However, inspection by the Architect or other District personnel in no way relieves the Contractor from its obligations to independently perform the Contractor's obligations in accordance with the Scope of Work. The Architect will be present on the site as frequently as the Architect reasonably deems necessary to consult with the Contractor and to judge whether the quality and quantity of the Contractor's work complies with the Contract. The Architect has the authority, but not the duty, to stop the Contractor from beginning or completing any portion of the Scope of Work that in any way fails to conform to the Contract.
- 3.8. Removal of Employees.** Either the District or the Architect may, in writing, require the Contractor to remove from the project any employee of the Contractor or a Subcontractor who the Architect or District finds careless, incompetent, or otherwise reasonably objectionable. However, neither the Architect nor the District will have the affirmative duty to make any such objection, and a failure to do so shall not relieve the Contractor from any obligation or liability under the Contract.
- 3.9. District's Right to Stop the Work.** If the Contractor fails to correct work that is not in accordance with the requirements of the Contract, or repeatedly fails to carry out its work in accordance with the Scope of Work, the Architect may issue a written order to the Contractor to stop its work, or any portion thereof, until the cause for such order has been eliminated. However, the right of the Architect to stop the work shall not give rise to a duty on the part of the District to exercise this right for the benefit of the Contractor or any other person or entity.

4. CONTRACTOR OBLIGATIONS

- 4.1. Contractor's Obligations.** The Contractor shall provide all goods, materials and services and perform all work described in the Scope of Work in conjunction with the Contractor's Proposal. The Contractor's performance is required to be in accordance with the Contract, industry standards, best practices, and the Contractor's Proposal.
- 4.2. Contractor's Performance of Scope of Work.** Within seven (7) calendar days of receipt of the notice to proceed, the Contractor shall commence the performance of the work. The

Contractor shall supervise and direct the work thereafter using its best skill and attention and consistent with the practices of the industry. The Contractor shall be solely responsible for all construction means, methods, techniques, permits, safety, sequences, and procedures, and for coordinating all portions of the work under this Contract. The Contractor shall perform all work in a good and workmanlike manner, in a timely manner, and free of defect. Except for weather delays, force majeure, or other written agreement by the Architect or the District, the Contractor shall continue the work in an expeditious manner, four (4) days per week (Monday through Thursday), excluding Fridays and District holidays. **The District, and the District only, may agree, in a writing signed by the District's General Manager, that the Contractor may also perform work on Fridays, Saturdays and/or Sundays.**

- 4.3. Designation of Contractor's Supervisor.** The Contractor shall, before commencement of the work, submit to the Architect the name of the person designated as its Supervisor.
- 4.4. Contractor's Supervisor On Site.** The Contractor shall employ a competent supervisor who shall attend the project site during the progress of the work. The supervisor shall be satisfactory to the Architect and shall not be changed except upon written approval of the Architect unless he/she leaves the employment of the Contractor. The supervisor shall represent the Contractor and shall have full authority to act on the Contractor's behalf. All communication given to the supervisor shall be as binding as if given to the Contractor.
- 4.5. Contractor's Employees/Representatives.** Contractor shall be fully responsible to the District for all acts and/or omissions of its employees, agents and/or representatives resulting in damage, either property damage or personal injury to the District, the Architect, a third person or any personnel employed by the same.
- 4.6. Subcontractors.** The Contractor shall submit a list of all Subcontractors it proposes to use during the Project. The Contractor shall not employ any Subcontractor to whom the District has a reasonable and lawful objection. After the execution of the Contract, the substitution of a previously approved Subcontractor or the addition of one, or more, new Subcontractors shall be made only with the written consent of the Architect.
- 4.7. Liability for Subcontractors.** The Contractor agrees to bind every Subcontractor to the terms and conditions of this Contract. The Contractor shall require its Subcontractors, in each subcontract, to perform their duties in conformance with all the Contract, and to submit cost estimates and cost-related supporting documentation in sufficient detail when so requested. The Contractor shall indemnify and hold harmless the District and the Architect as well as their employees, agents and assigns for any Subcontractor's claim that may result from the Contractor's failure to incorporate the provisions of the Contract into any subcontract.
- 4.8. Acts and/or Omissions of Subcontractors.** The Contractor shall be jointly and severally liable to the District, the Architect as well as any third-party Subcontractor for all acts and omissions of the Contractor's and Subcontractor's representatives, agents, and/or employees. The Contractor shall be responsible for ensuring its Subcontractor's adherence to the Scope of Work.

4.9. Review of Contract Documents and Field Conditions by Contractor.

4.9.1. Duty to Visit and Evaluate Site. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with site conditions under which the work is to be performed and correlated personal observations with the requirements of the Contract including, but not limited to, the information provided to the Contractor referenced in Article 3 above.

4.9.2. Duty to Review Contract. Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the work, carefully review and compare the Contract Documents to ensure complete understanding of the work to be performed; and further, the Contractor shall review any other information furnished by the Architect or the District. The Contractor is under an affirmative duty to make field observations of any existing conditions related to that portion of the Scope of Work. The Contractor is also under an affirmative duty to observe any conditions at the site effecting the performance of the Scope of Work. Where such conditions are discovered, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor. It is the Contractor's affirmative duty to determine whether, and to what extent, the Contract Documents may need to be clarified and to timely seek any such clarification from the Architect before commencement of the Scope of Work.

4.9.3. Failure to Visit Site and/or Evaluate Contract Documents Shall Not Excuse Performance. Any unreasonable failure by the Contractor to observe conditions at the site that may affect performance of the Scope of Work or to carefully review and compare the Contract Documents for lack of clarity shall not cause the District to incur any additional costs; and any such failure will not excuse the Contractor from the obligations to perform strictly in accordance with the Contract and Scope of Work.

4.10. Duty to Report Unforeseen Conditions or Circumstances. If the Contractor encounters conditions at the site that are subsurface, or otherwise concealed physical conditions that differ materially from the information provided in the Scope of Work, or unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in the construction activities concerning the Scope of Work provided for in the Contract, the Contractor shall promptly provide written notice to the Architect of such conditions before conditions are disturbed and/or any work is performed. If necessary due to such unforeseen conditions or circumstances, the Architect, in the exercise of his or her professional judgement, may issue a change order, in accordance with Article 6 below, modifying the Scope of Work as determined to be necessary by the Architect to conform to such conditions and describing any increase or decrease in the cost of the work outlined in the change order or the time for completion of the same.

4.11. Insurance. The Contractor shall not commence its performance under this Contract until the Contractor has obtained all the insurance required by this Contract, and files certificates of such insurance with, and are accepted by, the Architect acting on behalf of the District. Acceptance of the insurance certificates shall not relieve or decrease the liability of the Contractor. The Contractor's certificates of insurance and/or declarations

pages for each type of insurance required by this Contract are attached to this Contract as Attachment "B" and incorporated by reference.

4.12. Certificates of Insurance. Unless the Contractor has done so previously, the Contractor shall furnish certificates of insurance to the Architect and the District no later than five (5) days after execution of this Contract and, always before proceeding to initiate performance of any part of the obligations under this Contract. If Contractor fails to provide certificates of insurance in the time specified in this section, the District may terminate the contract.

4.13. Maintenance of Insurance. Unless otherwise provided, the Contractor shall provide and maintain, until the Scope of Work is completed and accepted by the District, the minimum insurance coverage as set forth below:

4.13.1. Commercial General Liability. Commercial General Liability insurance for bodily and personal injury (including death) and property damage.

- a. Each occurrence not less than \$1,000,000.
- b. General aggregate not less than \$2,000,000.
- c. The coverage shall include but not be limited to personal injury liability, premises/operations, and products/completed operations.

4.13.2. Worker's Compensation and Employer's Liability Insurance.

- a. Employers' Liability insurance of \$1,000,000 per occurrence.
- b. Worker's Compensation as required by statute.

4.13.3. Automobile Liability. Automobile Liability (for vehicles that Contractor uses in performing Work under the Contract, including Employer's Owned, Non-Ownership, and Hired Auto Coverage).

- a. Combined Single Limit of \$1,000,000 per occurrence.

4.13.4. Excess Liability.

- b. \$3,000,000 per occurrence and \$3,000,000 aggregate.

4.13.5. All-Builder's Risk.

- a. Non-reporting type with estimated completed value of the Project being used as the limit of insurance."

4.13.6. Miscellaneous Insurance Provisions. Other insurance requirements and provisions applicable to the insurance coverages required to be secured and maintained by Contractor are as follows:

- a. **Defense Costs.** Defense costs shall be excluded from the face amount of the policy. Aggregate limits are per twelve (12) month policy period unless otherwise indicated.

b. Waiver of Subrogation. All the insurance required to be carried by the Contractor under this Contract shall be by policies which shall require on their face, or by endorsement, that the insurance carrier waive any rights of subrogation to recover against the District, and that shall give thirty (30) days written notice to the District before such policies may be cancelled or materially changed. Within such thirty (30) day period, the Contractor covenants that it will provide other suitable policies in lieu of those about to be cancelled or materially modified, or nonrenewed to maintain in effect the coverage required under the provisions hereof Failure or refusal of the Contractor to obtain and keep in force the above-required insurance coverage shall authorize the District, at its option, to terminate the Contract immediately. The Contractor shall give written notice to the District within five (5) days of the date on which total claims by any party against Contractor reduce the aggregated amount of coverage below the amounts required by the Agreement. To the extent that the District may have policies of insurance which insure the District against losses caused by the Contractor or its subcontractors, the District shall be entitled to receive any, and all, monies due and payable under such policies and, in no event, shall receipt of the same by the District serve as an offset or credit against monies owed by the Contractor on account of the loss.

4.13.7. Contractor to Pay Premiums. The Contractor shall pay all insurance premiums, and the District shall not be obligated to pay any premiums. The Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the District.

4.13.8. Subcontractor. If any part of the work is subcontracted, similar insurance shall be provided by or on behalf of the Subcontractor to cover its operations, and evidence of such insurance, satisfactory to the District, shall be furnished by the Contractor within the time specified in this Article 4. In the event a Subcontractor is unable to furnish insurance in the limits required under the Agreement, the Contractor shall endorse the Subcontractor as an additional insured on its policies, excluding worker's compensation and employer's liability. Only unaltered original insurance certificates endorsed by the underwriter are acceptable. Photocopies are unacceptable.

4.13.9. Worker's Compensation. The Contractor shall maintain the minimum amounts of worker's compensation insurance as required pursuant to the laws of the State of Texas.

4.13.10. Occurrence Basis. All policies shall be on an "occurrence" basis rather than a "claims made" basis.

4.13.11. Additional Insured. Both the District and Cade L. Spell, AIA, Long Architects, Inc. shall be added as additional insureds on all the Contractor's insurance policies for the duration of the Contract.

4.13.12. Insurer Rating. The Contractor shall select as an insurer only those insurance companies with a rating of A.M. Best Company rated AX (A-10) or better, unless otherwise specifically approved in writing by the Architect in consultation with the District.

4.14. Performance and Payment Bonds. Before any work is commenced, the Contractor shall provide the following described surety bonds from a company lawfully authorized to issue surety bonds in Orange County, Texas, as follows:

4.14.1. Performance Bond. The Contractor shall provide a performance bond, in the form reasonably required by and acceptable to the Architect, in the amount of _____ Dollars (\$_____) whereby the Contractor and Surety shall bind itself and its subcontractors, jointly and severally, to the District for the performance of the Scope of Work made the basis of the Contract.

4.14.2. Payment Bond. The Contractor shall provide a payment bond in the form reasonably required by and acceptable to the Architect, in the amount of _____ Dollars (\$_____) whereby the Contractor and Surety shall bind itself and its subcontractors, jointly and severally, to the District for the payment of all labor, subcontractor services, materials and equipment furnished for use in the performance of the Contract.

4.15. Safety Precautions and Programs. It shall be the affirmative duty and responsibility of the Contractor and all its Subcontractors to understand and comply will all requirements of 29 U.S.C.A. §651 *et seq.* (the Occupational Safety and Health Act of 1970, aka "OSHA") and all amendments thereto, and to enforce and comply with all OSHA provisions. In any emergency affecting the safety of persons and property, the Contractor shall act, at its discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by the Contractor resulting from emergency work shall be considered in accordance with provisions for contract changes set forth in this Contract.

4.16. Warranty of Title. No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase, or other agreement by which an interest is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated as directed by the Scope of Work. Upon completion of the Scope of Work, the Contractor shall deliver the same together with all improvements and appurtenances constructed or placed by Contractor to the District free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance. Nothing contained in this section, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law of the State of Texas permitting such persons to recover from funds due the Contractor that are in the possession of the District. The provisions of this section shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

4.17. Warranty of Work and Materials. The Contractor warrants to the District that all materials and the work furnished in conjunction with the Scope of Work will be of good quality and in accordance with the customs, practices, and standards applicable to the same or similar work in the Contractor's industry. The Contractor further warrants that the work will conform to the requirements of the Contract, be performed in a good and workmanlike manner, and be free from defects, except for those inherent in the quality of the work that the Contract require or permit. Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements made the basis of this Contract

by the District (or any member of the public) shall constitute an acceptance of work not done in accordance with the Scope of Work (or lawfully executed change order) or otherwise relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any incidental or consequential damages resulting there from for a period of not less than _____ (____) months from the date of final acceptance of the work by the District.

- 4.18. Labor and Materials.** The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and facilities and services necessary for proper execution and completion of the Scope of Work, whether any of the same is temporary or permanent.
- 4.19. Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District, the Architect as well as their consultants, agents, employees, and representatives (including their successors and assigns) from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees arising out of or resulting from its performance provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property caused by the negligent acts and/or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to anyone pursuant to the laws of the State of Texas.
- 4.20. Interrelation of Documents.** Should the plans, diagrams, change orders (if any), or other media conflict one with another, or with the Scope of Work in general, the Contractor shall clarify the inconsistency with the Architect and obtain written instructions as to how to interpret the conflicting documents proceeding with any work related to the same.
- 4.21. Smoking.** The facility where the Scope of Work is to be performed is a nonsmoking building. Contractor's employees are prohibited from smoking in all areas except in areas designated for smoking.

5. SUBCONTRACTORS

- 5.1. Subcontractor Relations.** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent to which any part of the Scope of Work will be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract, and to assume toward the Contractor all the obligations, representations, warranties and responsibilities including, but not limited to, the responsibility for safety of the Subcontractor's work, all of which the Contractor, by this Contract, assumes toward the District. Each subcontract shall preserve and protect the rights of the District under the subcontract with respect to the work to be performed by the Subcontractor. Notwithstanding any provision herein, this Contract shall not create any obligation of the District as to any Subcontractor or other party. As such, privity of contract by and between the District and any Subcontractor is expressly denied by the Contractor as well as the District.

- 5.2. Cost Estimates.** Subcontractors shall be required to submit cost estimates in sufficient detail to the Contractor and/or the Architect when so requested.
- 5.3. Subcontractor Indemnification.** Contractor shall indemnify and hold harmless the District, the Architect as well as their consultants, agents, employees, and representatives (including their successors and assigns) from and against all claims against either one of them for all costs, expenses and losses that result from either the Contractor's or any of its Subcontractors' failure to strictly comply with the provisions of the Contract.
- 5.4. Reimbursement Due to Subcontractor's Failure to Perform.** The Contractor shall reimburse the District for costs that the District incurs that are payable to a subcontractor because of the Contractor's delays, improperly timed activities, defective materials or labor, or nonpayment of wages.

6. CHANGE ORDERS

- 6.1. Change Orders.** A change order is a lawfully executed written order to the Contractor, signed by the Architect or the General Manager which is issued after execution of the Contract and authorizing a modification in the Scope of Work. A change order may increase or decrease cost and/or otherwise modify the Scope of Work.
- 6.2. District Initiated Change Order.** The District may issue a change order on its own or through the Architect without invalidating the Contract. The District and/or the Architect may jointly or severally order changes in the Scope of Work consisting of additions, deletions, or other changes to the Scope of Work. No change in the Scope of Work shall be valid or authorized under this Contract unless it be in the form of a change order signed by the Architect or District's General Manager as the case may be.
- 6.3. Change Order's Effect Upon Contract.** Where such a change order has been issued and accepted, it shall be performed pursuant to the requirements of the Contract. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment for compensation shall be made and confirmed in writing in the change order itself.
- 6.4. Change Order Procedure.** Procedures for administration of change orders are set forth below:
- 6.4.1. Prior Approval Required.** A change in the obligations set forth in the Scope of Work shall be formally initiated by a change order detailing requirement of the proposed change, which in the Scope of Work may include a change in cost or time by the Contractor. Except for emergency conditions defined herein, the Architect or District's General Manager must approve any change order in writing for authorization to proceed with the work made the basis of the change order. The District will not be responsible for the cost of such changes in the Scope of Work performed by the Contractor without prior written approval of the Architect or the District's General Manager.
- 6.4.2. Effect of Change Order.** When a District initiated change order has been issued, it will have the full force and effect of a contract modification.

- 6.4.3. Contractor Objection.** If the Contractor objects to a District initiated change order, the Contractor shall state in writing the specific objections or points of disagreement to the Architect within three (3) calendar days of receipt of the proposed change order. Otherwise, the Contractor shall agree, in writing, to the change order and perform the work specified in the change order for the compensation (if any) set forth in the written change order.
- 6.4.4. Oral Representations Invalid.** No oral statement, or direction of Architect or the District's General Manager shall constitute a lawful change order under this Contract or entitle the Contractor to an adjustment in the Scope of Work and/or compensation unless in response to a *bona fide* emergency as determined by the Contractor with the concurrence of the Architect or District's General Manager. In such an instance, the instructions of the Architect shall constitute the substance of a change order. These instructions shall be reduced to writing and signed by the appropriate representative of the Parties as soon as is practicable after the abatement of the emergency condition.
- 6.4.5. Request for Additional Time or Compensation.** The Contractor shall make a claim for additional time or compensation in the form of a change order as specified in this Article 6.
- 6.5. Claims for Additional Costs.** If the Contractor wishes to make a claim for a change in the Contractor's compensation, the Contractor shall give the Architect written notice within twenty-four hours (24 hours) after the occurrence of the event giving rise to such claim. The claim for change in compensation rates shall be treated as a change order request initiated by the Contractor.
- 6.6. Grounds for Claim.** If the Contractor claims that a change in its schedule of rates or additional time is required because of: (1) any written interpretation of the Contract by the Architect, (2) any order by the Architect to stop the work where the Contractor is not at fault, or (3) any written order for a minor change in the Scope of Work, such grounds will be duly considered by the Architect, and the Contractor will be notified of the Architect's determination within seventy-two (72) hours. Any disagreement between the Parties shall be subject to Article 8 (Claims and Disputes).
- 6.7. Review of Contract Documents, Scope of Work and Project Conditions.** The Contractor shall carefully study and compare the Scope of Work together with any other information supplied by the Architect, the District as well as information within its own knowledge and expertise, and report immediately to the Architect any material errors, inconsistencies, or omissions which the Contractor reasonably discovers.
- 6.7.1. Failure to Report Errors, Errors, Omissions or Defective Conditions.** Should the Contractor or any of its Subcontractors fail to report to the Architect reasonably discoverable errors, inconsistencies, or omissions, and proceed to perform the Scope of Work incorporating such an error, inconsistency or omission, the Contractor shall assume responsibility for and shall bear liability to the District for the performance of such work.
- 6.7.2. Effect of Failure to Report Errors, Omissions or Defective Conditions.** The District, if applicable, may assume an intent to circumvent competitive bidding for necessary corrective project Work where the Contractor proceeds to perform the

work and fails to report to the Architect known errors, inconsistencies, and omissions. In such case, the District may choose to award a separate contract for the corrective work or terminate the Contract in the exercise of its sole discretion.

6.7.3. No Extension of Time Due to Reportable Errors, Omissions or Defective Conditions. Claims for time extensions or for extra cost resulting from delayed notice and/or reports of known errors, inconsistencies or omissions will not be considered by the Architect or the District for the issuance of a change order.

7. SUBSTANTIAL AND FINAL COMPLETION

7.1. Commencement of Work. Contractor shall commence the performance of the Scope of Work upon instruction to do so from the Architect and the work outlined in the Scope of Work shall be deemed to have commenced on the date of such instruction.

7.2. Determination of Substantial Completion. When the Contractor considers that the work, or a portion thereof which the District agrees to accept separately, is substantially complete, the Contractor shall notify the Architect and request a determination as to whether the work or designated portion thereof is substantially complete.

7.2.1. Notification of Lack of Substantial Completion. If the Architect does not consider the work substantially complete, the Architect will notify the Contractor giving reasons in support of his or her determination. Failure on the Architect's part to list a reason does not alter the responsibility of the Contractor to complete all items as reflected in the Scope of Work in accordance with the terms of Contract Documents.

7.2.2. Additional Request for Substantial Completion Determination. After satisfactorily completing items identified by the Architect, the Contractor shall then submit an additional request for the Architect to determine substantial completion.

7.2.3. Certificate of Substantial Completion. If the Architect determines that the work is substantially complete, the Architect will prepare and deliver a certificate of substantial completion which shall:

- a. Establish the date of substantial completion.
- b. Include a punch list of items to be completed or corrected before final completion and final payment.
- c. Establish the time within which the Contractor shall finish the punch list.
- d. Establish responsibilities of the District and the Contractor for damage to the Work, warranty, and insurance.

7.2.4. Punch List. Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all items reflected in the Scope of Work and/or the terms and conditions of these Contract Documents.

7.2.5. Certificate of Substantial Completion. The Certificate of Substantial Completion shall be signed by the Architect and the Contractor to evidence acceptance of the responsibilities assigned to each of them as reflected in such certificate.

7.3. Final Completion. The Scope of Work shall be fully and finally completed within _____ () calendar days of the issuance of the notice to proceed. However, the Architect, with the consent of the District, may extend said period in the event of inclement weather affecting the progress of the work. The District, with the advice and consent of the Architect, shall determine the date upon which the Scope of Work has been fully and finally completed.

8. CLAIMS AND DISPUTES

8.1. Submission of Claim. If the Contractor claims that any instructions of the Architect involve extra cost or extension of time, he shall, within three (3) calendar days after the receipt of such instructions, and in any event before proceeding to execute the work associated with the instructions, submit a protest in writing to the Architect, stating clearly and in detail the basis of any objections. No such claim will be considered unless so made.

8.2. Discrepancies in Plans. Any discrepancies which may be discovered between actual conditions and those represented by the Contract shall be reported at once to the Architect and work shall not proceed except at the Contractor's risk, until written instructions have been received by the Contractor from the Architect.

8.3. District's Limited Duty to Pay. If, based on the available evidence, the Architect determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed.

9. CONTRACT PAYMENTS

9.1. Contract Price Breakdown. The Contractor's Proposal (Bid Form) (Attachment "C") shall be used as the basis for calculation of progress payments under the Contract.

9.2. Requests for Progress Payments and Final Payment. After the expiration of thirty (30) days from the date that the Contractor begins the performance of the work outlined in the Scope of Work, the Contractor may submit to the Architect, an itemized request for a progress payment for completed portions of the Scope of Work. The request for progress payment shall include and be supported by all data substantiating the Contractor's right to payment that the Architect may require. The request for progress payment shall reflect retainage of ten percent (10%) of the amount represented by the request for progress payment to be owed to Contractor, which shall be retained by the District until such time as final payment is made to the Contractor. By submitting a request for progress payment or a request for final payment, the Contractor represents and warrants to the District that to the best of Contractor's knowledge, information and belief: (a) all work covered by the request for progress payment or final payment has been performed in compliance with the Contract, and is free and clear of liens, claims, security interests or other encumbrances adverse to the District's interests; and (b) all payrolls, bills for labor, materials, equipment, or other indebtedness connected with such work have been paid or will be paid within thirty (30) days after receipt of payment. The Contractor may submit a successive request for progress payment after the expiration of thirty (30) days from the date of the submission

of the last preceding request for progress payment and may submit the final application for payment after all work has been performed in accordance with the Contract.

- 9.3. Progress Payments.** Except for the District's right to withhold payment as reflected in Section 9.4 below, the District shall make payment to the Contractor within thirty (30) days of a properly submitted and documented application for progress payment or application for final payment.
- 9.4. Withholding Payment.** Until corrected in accordance with Texas law, the District reserves the right to withhold or, on account of subsequently discovered evidence, nullify that part of any request for payment to such extent as may be necessary to protect the District from loss on account of:
- a. Defective work not remedied.
 - b. Damage to work of another contractor.
 - c. Failure to maintain scheduled progress; or
 - d. Failure to timely pay wages to its employees, or otherwise make due and owing payments to suppliers and subcontractors.
- 9.5. Final Payment.** Notwithstanding any other provision herein, final payment to the Contractor shall not become due until the Contractor has delivered to the District a complete release of all liens arising out of the Contract and the work, provides receipts required by the District evidencing payment for all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the District to indemnify the District against such a lien, and provides the District with all guarantees and warranties required by this Contract.
- 9.6. Payment Shall Not Be Deemed a Release.** Payments to the Contractor shall not be construed to release the Contractor, or its surety (if any) from any obligations or other liability under the Contract.

10. TERMINATION OR SUSPENSION OF THE CONTRACT

- 10.1. Termination by Contractor.** The Contractor may terminate the Contract as follows: if the work is stopped for a period of five (5) consecutive calendar days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor, then the Contractor may, upon ten (10) additional calendar days written notice to the Architect, terminate the Contract and recover from the District payment for all work executed in accordance with the Contract up to the date of termination.
- 10.2. Termination by District for Cause.** The District may terminate the Contract for cause if the Contractor: (1) persistently or repeatedly refuses or fails (except in cases for which extension of time is provided) to supply a sufficient number of properly skilled workmen or proper materials, (2) persistently or repeatedly refuses or fails to timely pay his subcontractors or suppliers, (3) persistently or repeatedly disregards laws, ordinances,

rules, regulations, instructions or orders of the District or any public authority having jurisdiction, (4) otherwise is guilty of a substantial breach of a provision of the Contract, or (5) fails to so perform the work as to insure its completion, within the time, or any extension thereof, specified in the Contract. Upon occurrence of any of the above, the District may, without prejudice to any right or remedy provided in this Contract or by the laws of the State of Texas and after giving the Contractor and his surety, if any, three (3) days written notice, terminate the Contract. When the District terminates the Contract for one of the reasons stated hereinabove, the Contractor shall only be entitled to payment for such work which was completed in accordance with the Contract prior to the occurrence which is the basis of the termination.

10.3. Termination for Convenience of District. The District may, at any time, terminate the Contract at the District's convenience and without cause. Upon receipt of written notice from the District of such termination for the District's convenience, the Contractor shall: (1) cease operations as directed by the District in the notice; (2) take actions necessary, or that the District may direct, for the protection and preservation of the work, (3) except for work directed to be performed prior to the effective date of termination stated in the notice, immediately terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; (4) within seven (7) days of the date of the notice of termination, submit a final invoice to the District for payment due up until the date of termination for work executed in accordance with the Contract and reasonable demobilization costs. The final invoice shall set forth the basis for costs claimed by the Contractor, fully detailed and with adequate support for the District's review and determination. If the Contractor fails to submit a final invoice within the time allowed, the District may determine the amount due to the Contractor because of the termination and shall pay the determined amount to the Contractor.

10.4. Liquidated Damages for Delays. If the work is not completed within the time stipulated in the applicable bid, the Contractor shall pay to the District as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of Five Hundred and 00/100 Dollars (\$ 500.00) for each calendar day of delay, until the work is completed. The Contractor and his sureties shall be liable to the District for the amount thereof.

10.5. Certain Delays Excused.

10.5.1. Reasonable Delays. The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:

- a. Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency.
- b. Any acts of the District.
- c. Causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another contractor in the performance of some other Contract with the District, fires, floods,

epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions.

10.5.2. Notification of Architect Required. The Contractor shall promptly notify the Architect within two (2) days in writing of the cause of the delay. Upon receipt of such notification, the Architect shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this Contract, the delay is properly excusable, the Architect may authorize an extension of time for completing the work for a period commensurate with the period of excusable delay.

10.6. Written Notice. Written notice shall be considered to have been duly given if delivered in person by the Contractor to the Architect or Architect to the Contractor as the case may be. Notice shall also be effective where delivered at or sent by registered or certified mail by the Contractor to the Architect or Architect to the Contractor as the case may be. Any such Notice shall be delivered to the address provided in this Contract.

XI. CONTRACT COMPLETION TIME

11.1. Time for Completion. The Contractor shall complete the work on or before the expiration of _____ (____) days from the date of the issuance of the notice to proceed.

11.2. Delays and Extensions of Time. The Contractor may be granted an extension of time for good cause. Claims for extensions of time must be made in the form of a change order request made within twenty-four (24) hours after the occurrence of the delay. All time extension claims shall be supported by sufficient written evidence to justify the issuance of a change order. In the case of a continuing cause of delay, only one change order is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days.

11.3. Failure to Complete Scope of Services on Time. The Parties agree that time is of the essence with respect to the completion of the work. Contractor acknowledges and agrees that its failure to expeditiously perform the work will cause damage to the District. Accordingly, if the Architect reasonably determines that the Contractor is not performing the work in a reasonably expeditious or efficient manner or is otherwise performing the work in a manner that is unduly delaying the completion of the work, the Architect may stop the work, and the District may terminate the Contract. If the District terminates the Contract for this reason, the Contractor shall only be entitled to payment for such work which was completed in accordance with the Contract Documents prior to the stoppage of the work and termination of the Contract.

XII. FINAL ACCEPTANCE AND PAYMENT

12.1. Notification and Payment. When the Scope of Work is completed, the Contractor shall notify the Architect, in writing, that the work will be ready for final inspection on a definite date. Upon verification by the Architect that the work is ready for final inspection and acceptance, the Architect shall have seven (7) calendar days to make a final inspection. When (1) the work is found acceptable as compared to the Scope of Work; (2) the Contractor has performed all obligations under the Contract; and (3) the Contractor has submitted all data and documentation substantiating the Contractor's right to payment, the

District shall issue a final payment to the Contractor within thirty (30) calendar days after acceptance by the District.

- 12.2. Final Payment.** Acceptance of final payment shall constitute a waiver of all claims by the Contractor against the District except those specifically enumerated in writing at the time of final payment.

13. CLAIMS AND DISPUTES

- 13.1. Dispute Resolution, Jurisdiction and Venue.** The Parties to this Contract shall attempt to settle disputes arising under this Contract by discussion between the Parties' senior representatives of management in consultation with the Architect. If any dispute cannot be resolved in this manner within a reasonable length of time, the Parties may agree to submit the dispute to non-binding mediation prior to filing any legal proceeding. If either party institutes any legal proceeding, including but not limited to a lawsuit, that arises out of, or relates to the rights and obligations of the Parties to this Contract or the Project, the Parties agree that the exclusive jurisdiction and venue of such legal proceeding shall lie in Orange County, Texas, in an appropriate state district court or county court at law having competent jurisdiction over such matters and sitting in Orange County, Texas.

14. CONTRACT PROVISIONS REQUIRED BY THE STATE OF TEXAS

- 14.1. Child Support Obligation.** Under Section 231.006 of the Texas Family Code, the Contractor certifies that the Contractor (individual or business entity) named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated, and payment may be withheld if this certification is inaccurate. TEX. FAM. CODE §§ 231.006 and 231.302.
- 14.2. Contracting Information Responsibilities.** In accordance with Section 552.372 of the Texas Government Code, the Contractor agrees to (1) preserve all contracting information related to this contract as provided by the records retention requirements of the District for the duration of the Contract, (2) promptly provide to the District any contracting information related to the Contract that is in the custody or possession of the Contractor on request of the District, and (3) on termination or expiration of the Contract, either provide at no cost to the District all contracting information related to the Contract as provided by the records retention requirements of the District. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of subchapter J, Chapter 552, Texas Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. TEX. GOV'T CODE §552.372.
- 14.3. Critical Infrastructure Affirmation.** Pursuant to Government Code Section 2274.0102, the Contractor certifies that neither it nor its parent company (if any), nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Texas Government Code Section 2274.0103, or (2) headquartered in any of these countries. TEX. GOV'T CODE §2274.0102.
- 14.4. Energy Company Boycotts.** The Contractor represents and warrants that: (1) it does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply

to the Contract. If circumstances relevant to this provision change during the Contract, the Contractor shall promptly notify the District. TEX. GOV'T CODE § 2271.002.

- 14.5. Entities That Boycott Israel.** The Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the Contract, the Contractor shall promptly notify the District. TEX. GOV'T CODE § 2271.002.
- 14.6. Excluded Parties.** The Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control. Exec. Order No. 13224, 31 C.F.R. 594 (2001-2021).
- 14.7. Firearms Entities and Trade Associations Discrimination.** The Contractor verifies that: (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the Contract, the Contractor shall promptly notify the District. TEX. GOV'T CODE §2274.001 *et seq.*
- 14.8. Foreign Terrorist Organizations.** The Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code. TEX. GOV'T CODE §2252.152.
- 14.9. No Conflicts of Interest.** The Contractor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonable create an appearance of impropriety. TEX. GOV'T CODE §§ 2252.908, 2252.032 and 2261.252(b).
- 14.10. Texas Public Information Act.** Notwithstanding any other provision herein, the Parties expressly acknowledge that this Contract is subject to the Texas Public Information Act, TEX. GOV'T CODE §§ 552.001 *et seq.*, as amended (the "Act"). The Contractor expressly understands and agrees that the District shall release all information necessary to comply with Texas law without the prior written consent of Contractor. It is expressly understood and agreed that the District, its officers, and employees may request advice, decisions, and opinions of the Attorney General of Texas ("Attorney General") regarding the application of the Act to any part of the Contract or other information or data furnished to the District, whether the same are available to the public. It is further understood that the District, its officers and employees shall have the right to rely on the advice, decisions, and opinions of the Attorney General, and that the District, its officers, and employees shall have no liability or obligations to the Contractor for the disclosure to the public, or to any person or persons, of any software, or a part thereof, or other information or data furnished to the District in reliance on any advice, decision or opinion of the Attorney General. In the event the District receives a written request for information pursuant to the Act that affects Contractor's rights, title to, or interest in any information or data or a part thereof, furnished to the District by the Contractor under this Agreement, then the District will promptly notify the Contractor of such request. The Contractor may, at its own option and expense, prepare comments and submit information directly to the Attorney General

stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. The Contractor is solely responsible for submitting the memorandum brief and information to the Attorney General within the period prescribed by the Act. The Contractor is solely responsible for seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged. With respect to electronic mail addresses, the Contractor affirmatively consents to the disclosure of its e-mail addresses that are provided to the District. This consent is intended to comply with the requirements of the Act and shall survive termination of this Contract. This consent shall apply to e-mail addresses provided by the Contractor and agents acting on behalf of the Contractor and shall apply to any e-mail address provided in any form for any reason whether related to this Contract or otherwise. TEX. GOV'T CODE §552.001 *et seq.*

14.11. Deceptive Trade Practice; Unfair Business Practices. The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under the Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings. The Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and those officers have not been found to be liable for such practices in such proceedings. See, TEX. BUS. & COMM. CODE §17.01 *et seq.*

15. MISCELLANEOUS PROVISIONS

15.1. Compliance with Laws and Regulations. In providing all services pursuant to this Contract, the Contractor will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Contract and will entitle the District to terminate this Contract immediately upon delivery of written notice of termination to the Contractor. The Contractor shall indemnify and hold harmless the District and its officers, agents and employees against any claim arising from violation of any such law, ordinance, or regulations by itself or by its subcontractors, or suppliers at any time, or its or their employees.

15.2. Cooperation With Other Governmental Entities. The Contractor shall always cooperate with applicable county, or other government officials with jurisdiction in Orange County, Texas over the Project. The Contractor shall make application for permits (if any) and permanent utilities that are required for the performance of the Scope of Work attached to the Contract.

15.3. Immigration Reform. By this reference, all requirements to comply with the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract are incorporated.

15.4. Wage Rates. The Contractor is required to pay prevailing wages not less than the wage scale of the various classes of labor as shown on the "Davis-Bacon Wage Determination" (<https://www.wdol.gov/>). The specified wage rates are minimum rates only, and the District

will not consider any claims for additional compensation made by any Contractor because of payment by the Contractor of any wage.

- 15.5. State Sales and Use Taxes.** The District qualifies for exemption from State and Local Sales and Use Taxes for purposes of this Contract. The District will provide a properly executed Texas Sales and Use Tax Exemption Certification as requested by the Contractor.
- 15.6. Antitrust Claims.** The Contractor shall assign to the District all claims for overcharges associated with this contract which arise under the antitrust laws of the United States or the State of Texas. See, TEX. BUD. & COMM. CODE §15.01, *et. seq.*
- 15.7. Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in the form of a written change order signed by both Parties.
- 15.8. No Assignment.** The District and the Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to all covenants, agreements and obligations contained in the Contract. The Contractor shall not assign the Contract or sublet it without the written consent of the District, nor shall the Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the District. The District shall not unreasonably withhold such approval.
- 15.9. No Third-Party Beneficiaries.** There are no third-party beneficiaries of the Contractor's services under this Contract.
- 15.10. Contingency Fee.** The Contractor warrants that it has not employed or retained any company or person, other than a *bona fide* employee working solely for the Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a *bona fide* employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- 15.11. Nondiscrimination.** The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, the Contractor agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual based on race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, the Contractor agrees to comply with all applicable laws and regulations including but not limited to the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246 and the American with Disabilities Act of 1990, and all amendments and as well Chapter 21 of the Texas Labor Code.
- 15.12. Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Texas. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the

singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. Terms appearing in parenthesis in this Contract shall be construed and given the same weight at those terms not appearing in parenthesis.

15.13. Force Majeure. A *force majeure* event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, or freight embargo; provided, however, that no event or occurrence will be deemed to be a *force majeure* event unless the failure to perform the obligations set forth in this Contract is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a *force majeure* event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a *force majeure* event shall promptly notify the other Party of the *force majeure* event and shall use its best efforts to minimize any resulting delay.

15.14. Merger and Integration. This Contract represents the entire agreement of the Parties with respect to the subject matter hereof. No representations, warranties, inducements, or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written contracts or agreements.

15.15. No Waiver of Rights. Neither the District's review, approval, or acceptance of, or payment for, any of the services provided by the Contractor, shall be construed to operate as a waiver of the District's rights under this Contract. Contractor shall be and always remain liable to the District in accordance with applicable law for all damages to the District caused by the Contractor's negligent or wrongful provision of any of the services furnished under this Contract. Failure of the District to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the District at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the District's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time. The District expressly and affirmatively retains all rights, benefits, and immunities of sovereign and/or governmental immunity in accordance with Texas law.

15.16. Notices. Effective notice to each party shall be delivered by certified mail, facsimile, electronic mail, or hand delivery to the respective Parties as follows:

Orange County Drainage District
do Mr. Cade Spell, AIA
Long Architecture, Inc.
5955 Phelan Blvd, Suite L
Beaumont, Texas 77706
Tel: (409) 866-3443
cspell@long-arch.com

[Contractor Contact Information]

15.17. Authority. Each person signing this Contract warrant that each of them have the authority to sign as, or on behalf of, the Party for whom they are signing.

15.18. Originals and Electronic Copies of Contract. Each Party agrees that this Contract, and any other documents to be delivered in connection to the Contract, may be electronically signed, and that any electronic signatures appearing on this Contract, or other document relating to this Contract, which is represented to be the signature of a Party's authorized representative shall be deemed to be the same as a handwritten signature for the purposes of validity, enforceability, and admissibility of this Contract.

15.19. Multiple Originals. It is understood and agreed that this Contract may be executed in two identical counterparts (one for each party), each of which shall be deemed an original for all purposes.

SIGNED AND EFFECTIVE on the latest date set forth below by persons who each affirm that they possess the lawful authority to execute the Contract on behalf of their respective Parties and bind each Party to the terms and conditions of the Contract.

ORANGE COUNTY DRAINAGE DISTRICT

By: _____
Don Carona, General Manager

Date

[CONTRACTOR]

By: _____
Its Authorized Representative

Date

Attachments:

- A. Scope of Work, Plans and Drawings
- B. Contractor's Declarations Pages evidencing its various insurance coverages
- C. Contractor's Bid Proposal (submitted in response to the District's RFCSP-2022-01)