

AGREEMENT

FOR

**PROGRAM MANAGER, BUILDING ENVELOPE AND COMMISSIONING SERVICES
FOR THE 2022 BOND PROGRAM & OTHER CAPITAL IMPROVEMENT PROJECTS**

BETWEEN

GALVESTON INDEPENDENT SCHOOL DISTRICT

AND

ZERO/SIX CONSULTING, LLC.

AGREEMENT FOR PROGRAM MANAGER, BUILDING ENVELOPE AND COMMISSIONING SERVICES

This Agreement for Program Manager, Building Envelope and Commissioning Services (“Agreement”) is made by and between **GALVESTON INDEPENDENT SCHOOL DISTRICT** (“GISD” or “Owner”) and **ZERO/SIX CONSULTING LLC** (“Program Manager”) effective as of August ____, 2022 (“Effective Date”). As used herein, the term “Party” means Owner or the Program Manager individually and the term “Parties” means Owner and the Program Manager collectively.

The Owner and Program Manager enter into this Agreement for the purpose of setting forth the respective rights and obligations regarding the Services to be performed by the Program Manager in connection with the oversight, management, and construction of the Owner’s 2022 Bond Program and other related Capital Improvement Projects. Additionally, this Agreement is entered into for the purpose of setting forth the respective rights and obligations regarding the Services to be performed by the Program Manager in connection with Facility Support Services in support of the Owner’s ongoing and future facility needs.

The Owner and the Program Manager agree as set forth below:

1. DEFINITIONS

The following words and phrases appearing in initial capitalization shall for the purposes of this Agreement have the following meanings:

- 1.1 Program. The Program consists of the approximately \$314,800,000 2022 Bond Program measure that was passed by voters May 2022. As set forth in this Agreement and in accordance with each Work Authorization document, the Program Manager will provide Services (as hereinafter defined) for a portion of the Program.
- 1.2 Project; Projects. Any project and/or all of the projects listed in the Work Authorization(s) mutually agreed to in writing by the Parties.
- 1.3 Services. The services to be performed by the Program Manager under this Agreement for the Projects, which shall consist of the Basic Services described in Article 3 and in accordance with each Work Authorization; any Additional Services that may be performed as described in Article 7; and as otherwise described as obligations of the Program Manager under this Agreement.
- 1.4 Basic Services. Basic Services shall consist of the Services as set forth in accordance with each Work Authorization, Article 3 of this Agreement, and as otherwise described as obligations of the Program Manager under this Agreement, other than Additional Services, to be performed and provided by the Program Manager under this Agreement in connection with the Program.
- 1.5 Additional Services. Additional Services shall consist of services in connection with the Program that are not Basic Services and that the Program Manager and the Owner agree to

in writing in advance, such Additional Services being further described in and managed and administered in accordance with Article 7. All Services performed by the Program Manager will be treated as Basic Services unless the Owner specifically approves a particular service in writing, in advance of performance as an Additional Service or obligation of Owner to pay the Program Manager for the Additional Services.

- 1.6 Work. The Work is the provision by the Contractor, an architect, engineer, surveyor, or other third party of all services, labor, materials, supplies, and equipment that are required or reasonably inferable to complete a specific Project in strict accordance with the requirements of the Construction Contract Documents. The term “reasonably inferable” takes into consideration the understanding of the Owner and Contractor that not every detail of the Work will be shown in the Construction Contract Documents.
- 1.7 Construction Contract Documents. The Construction Contract Documents consist of the Agreement for Construction Services between Owner and the Contractor (“Agreement for Construction Services”); the General Conditions for the Agreement for Construction Services, attached as an exhibit to the Construction Agreement (“General Conditions of the Contract”); any properly agreed amendments to the Agreement for Construction Services or the General Conditions of the Contract; all addenda issued prior to the effective date of the Agreement for Construction Services; the Project manuals developed for the construction of the Projects, or a portion thereof, by the Design Team and all documents required thereunder; and the Drawings; the Plans and Specifications developed by Design Team; the most current version of the Owner’s Guidelines for Construction; the Owner’s solicitation documents for the Agreement for Construction Services, the Contractor’s proposal, the Contractor’s bonds and proof of insurance, contracts between Owner and other third parties related to the Program, and other documents listed in the Construction Contract Documents. The form of the Agreement for Construction Services and the General Conditions of the Contract shall be on Owner’s standard forms as adapted for the specific Projects.
- 1.8 Contractor; Contractors. A contractor is any person or entity that is procured by the Owner in accordance with Chapter 2269 of the Texas Government Code or other permissible procurement methods and that enters into an Agreement for Construction Services with the Owner to perform any part of the Work in connection with one or more Projects, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into any Project or sub-project within the Program. The Parties acknowledge and agree that the Owner may elect to contract with one Contractor or multiple Contractors to perform Work on the Projects assigning a Contractor to a Project based on the evaluation criteria required or permitted by Applicable Law. The term “Contractor” means the Contractor or its authorized representative, but excludes the Program Manager or any member of the Design Team.
- 1.9 Design Team. The Design Team shall consist of and the term shall mean licensed professionals or firms employing such licensed professionals as required under and in accordance with the Texas Occupations Code, engaged by Owner as independent consultants for design of all or a portion of the Program and to prepare Drawings and

Specifications for the construction of the Projects. More than one such professional or firm may be employed by Owner.

- 1.10 Drawings. The Drawings are the graphic and pictorial portions of the Construction Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- 1.11 Specifications; Plans and Specifications. Plans and Specifications has the same meaning as set forth in the agreement between the Owner and the Design Team, including, without limitation, all drawings; specifications; written requirements for materials, equipment, systems, standards and workmanship for the Work and performance of related services; and instructions to Contractor.
- 1.12 Basic Services Compensation. Basic Services Compensation shall be the fee to be paid by the Owner to the Program Manager as consideration for the performance of the Basic Services by the Program Manager as set forth in accordance with each Work Authorization and further described in Section 4.
- 1.13 Additional Services Compensation. Additional Services Compensation shall be the fees determined in accordance with Section 7.2 to be paid by the Owner to the Program Manager in consideration for the performance of Additional Services or on account of the occurrence of an event specified in Section 7.1.
- 1.14 Project Team. The Project Team consists of the Owner, Contractor, any or all members of the Design Team, the Program Manager, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, and construction of the Projects. The constitution of the Project Team may vary at different phases of the Program. The Project Team will be designated by Owner and may be modified from time to time by Owner at its discretion.
- 1.15 Applicable Law; Applicable Laws. Applicable Law or Applicable Laws shall consist of all applicable federal, state, and local laws and ordinances, implementing regulations, executive orders, building codes, and interpreting authorities including, but not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1); Fair Labor Standards Act; Immigration Reform and Control Act of 1986; the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.); the Civil Rights Act of 1991; Title IX of the Education Amendments of 1974; Section 504 of the Rehabilitation Act of 1973; Environmental Laws (as hereinafter defined); the Texas Government Code Chapters 2251, 2253, 2258, and 2269; the Texas Education Code; Texas Labor Code Chapters 401 and 406; Texas Health and Safety Code Section 756.02; the Texas Insurance Code; the Texas Local Government Code; the Texas Civil Practices and Remedies Code; the Texas Family Code; the Texas Administrative Code; the Owner's Board policies with respect to construction, contractors, vendors, and building use.
- 1.16 Construction Cost. Construction Cost means the total cost to Owner of those portions of the entire Project designed, specified, reviewed, observed, scheduled, estimated, accounted

or coordinated by and through Program Manager. Construction Cost does not include Program Manager's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or Owner's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project. Construction Cost includes Owner approved changes that increase or decrease the total cost of those portions of the entire Project designed, specified, reviewed, observed, scheduled, estimated, accounted or coordinated by Program Manager. Construction Cost is one of the items comprising Total Project Costs.

- 1.17 Total Project Costs. Total Project Costs means all necessary costs for the project including the sum of the Construction Cost, allowances for contingencies, the total costs of design professionals, Program Manager costs, allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to Owner.
- 1.18 Actual Cost. Total Project Cost less the Program Manager's compensation and expenses, the cost of land or real estate interests, rights of way, or compensation for or damages to properties, the cost of bond issuances or financing, or Owner's legal, accounting, or insurance counseling or auditing services, or interest and financial charges incurred in connection with the Projects.
- 1.19 Other Defined Terms. Any capitalized terms not defined in this Agreement shall have the meanings set forth in an attachment to this Agreement.

2. RELATIONSHIP OF THE PARTIES

- 2.1 STANDARD OF CARE. The Program Manager will represent the best interest of the Owner and will represent the Owner in a professional manner with the utmost good faith, honesty and fairness as required by Applicable Law. The Program Manager covenants with the Owner to furnish its professional skill and judgment with due care in accordance with the generally accepted standards of construction program management practice in the same or similar locality and in accordance with Applicable Law that are applicable to the performance of the Services and which are in effect on the date of this Agreement or as may be amended during the term hereof. The Program Manager shall provide the services as set forth in this Agreement in professional and courteous manner. In general, the Program Manager shall have primary management responsibility for Projects assigned to it and more specifically shall coordinate all such Project matters with a goal to attain the completion of Projects on time and within budget. However, this management responsibility is not a delegation of authority and all decisions must be compiled and brought by Project Manager to the Owner. The Program Manager shall not be regarded as a guarantor with respect to any work product provided hereunder. Notwithstanding anything to the contrary contained in this Agreement, Owner and Program Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Program Manager's special and unique abilities with respect to performing the services, and Program Manager's special and unique abilities with respect to construction management and program management, including, without limitation, leadership and coordination of all

of the District's other independent contractors for the Project, including construction general contractors, architects, engineers, surveyors, testing laboratories, trade contractors, and special consultants as the Owner's representative agent. The Program Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Program Manager shall perform its services consistent with the skill and care ordinarily provided by program managers practicing in the same or similar locality under the same or similar circumstances in accordance with the federal, state and local laws and regulations which are applicable to the performance of the Services and which are in effect on the date of this Agreement or as may be amended during the term hereof. The Program Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Program. The Program Manager'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 Program Manager 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 Program Manager's skill and knowledge in performing the Services. The Program Manager represents, covenants, and agrees, in conformance with the Standard of Care, to furnish efficient business administration and superintendence and perform the Services in an expeditious and economical manner consistent with the interests of District. The Program Manager shall not engage in any activity or accept any employment or project that would reasonably appear to compromise the Program Manager's judgment with respect to the Program. The Program Manager shall provide its services in cooperation with the services provided by the Owner and the Owner's consultants and contractors and shall coordinate its services with those services provided by the Owner and the Owner's consultants and contractors subject to the terms of this Agreement. The Program Manager shall provide prompt written notice to the Owner if the Program Manager becomes aware of any error, omission or inconsistency in such services or information. The Program Manager'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 Program Manager 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 Program Manager's skill and knowledge in performing the Services. Program Manager warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the Services. All Program files pertaining to the Projects, with the exception of Program Manager's business, financial and personnel, are to be open and available to District for review at any time during normal working hours with a reasonable amount of notice. Program Manger represents and warrants that now and during the Term of the Agreement, it is financially solvent and able to pay its debts, it is able to perform the Services with competent personnel, it is authorized to do business and in good standing in the State of Texas and properly licensed by all necessary and reasonable government and quasi-public authorities, it is duly authorized to enter into this Agreement and perform the Services. Program Manager agrees to abide by all reasonable safety precautions and programs in performance of the Services.

- 2.2 RELATIONSHIP WITH PROJECT TEAM. In providing Services, the Program Manager shall maintain a working relationship with the Project Team Members on behalf of the Owner and shall monitor and have oversight, in conjunction with the Owner, of the Project Team members' activities to ensure that the Projects are properly accomplished and achieve

Substantial Completion (as defined in the Construction Contract Documents) in accordance with Owner's schedule. In addition to the reports and deliverables required of the Program Manager as Basic Services, the Program Manager will make periodic reports to the Owner's Board of Trustees and the Owner's Representative (as hereinafter defined) and will assist in the day-to-day management of the Program. The Program Manager personnel shall be responsible for the transfer of knowledge in all phases between the Program Manager and the Owner's Representative and other individuals designated by Owner. The Program Manager, along with the Owner's Representative, will provide guidance and coordination for the activities of the other members of the Project Team. The Program Manager will use its professional efforts to monitor the Work of other members of the Project Team in accordance with the Scope of Services set forth in each Work Authorization. The Program Manager shall be responsible for its own activities at each Project site or office including the safety of its employees, but shall not assume control of or responsibility for the site or office, or the safety of persons not in the Program Manager's employ or otherwise under the Program Manager's control, such as the Professional Consultants with which the Program Manager contracts. Notwithstanding the foregoing, the Program Manager will verify that the Contractor selected for a particular Project has a safety plan in place and will notify the Owner of any violations that the Program Manager observes or of which the Program Manager reasonably should be aware. Subject to this requirement, the Program Manager shall not be responsible for construction means, methods, sequences or procedures utilized by the Contractor or the Contractor's breach of contract; or Contractor's failure to carry out safety or security in connection with the Program or the performance of the Work; observation of the Work on the Projects (unless otherwise specified as a Basic Service in each Work Authorization); acts or omissions of the Design Team; or adequacy or accuracy of any part or all of the Program design. The relationship between the Parties is that of Independent Contractors; neither Party has the authority to bind the other in any manner. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the Parties and/or their respective employees. This Agreement does not create a joint venture, business partnership or agency relationship between the Parties.

- 2.3 ASSIGNMENT OF PROGRAM MANAGER; SUBSTITUTION OF PERSONNEL. The Program Manager will assign personnel to the positions in coordination with the Owner's written approval. Program Manager will provide the qualifications and names of its employees and agents whenever requested by Owner. After approval by the Owner of the persons assigned to the positions, the persons assigned shall not be changed except with the consent of the Owner and the proposed replacement person must be approved by the Owner in advance of performing Services under this Agreement. Subject to the foregoing, each Party may substitute duly qualified personnel for persons with substantially the same experience, knowledge, and skill to carry out that person's respective responsibilities under this Agreement. Program Manager represents that all personnel shall be properly registered and licensed and trained according to applicable law and best practices within the industry. Program Manager represents that the person in charge of the performance of Program Manager's Services shall be, at all times, a highly qualified person in all respects with expertise in all relevant disciplines. The Owner may request in writing, with or without cause, the immediate removal of any of the Program Manager's employees, subcontractors,

or agents. Upon receipt of any such request, Program Manager shall immediately remove the employee(s), subcontractor(s), or agent(s) named therein.

- 2.4 EMPLOYEE NON-COMPETE The Owner agrees not to solicit or hire the Program Manager's employees who are involved with the Project prior to one year after completion of the Project.

3. BASIC SERVICES

- 3.1 BASIC SERVICES. The Program Manager, which is the entity with which the Owner is contracting under this Agreement, shall perform the Basic Services, for the Projects, and in the time frames, set forth in this Agreement and in accordance with each Work Authorization. The Program Manager shall perform the Services in accordance with this Agreement and Applicable Law.

3.1.1 NO AUTHORITY. The Owner intends to oversee the Program utilizing a limited number of internal staff, primarily intended to perform policy, oversight and approval functions. As such the Program Manager will undertake many of the daily and routine functions that might otherwise be performed by district staff. The Program Manager shall have no authority to act on behalf of the Owner. The Program Manager shall not have control over, charge of, or responsibility for the payments and final approvals required by Owner, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs employed in connection with the construction of the projects in the Program, nor shall the Program Manager be responsible for the failure of the Owner's consultants or contractors to perform services for, or the construction of, a project in accordance with the plans, specification or other contract or legal requirements. Subject to the other provisions of this Agreement, the Program Manager shall be responsible only for the Program Manager's negligent acts or omissions.

- 3.2 GENERAL SERVICES. The Program Manager, understanding the Owner's administrative need to rely on Program Manager and trust it places in the Program Manager, shall endeavor to carry out other activities necessary to successfully complete this Agreement. All actions shall be done with the understanding that the Owner retains authority to approve or bind the Owner, and the Program Manager is a facilitator of that process.

4. COMPENSATION

- 4.1 AGREEMENT TO PAY BASIC SERVICES COMPENSATION. As a dependent covenant conditioned on the performance of the Basic Services by the Program Manager in accordance with this Agreement and Applicable Law, the Owner shall pay the Program Manager any undisputed amounts owed for the Basic Services Compensation in accordance with each Work Authorization

- 4.2 BASIC SERVICES COMPENSATION AMOUNT.

- 4.2.1 Calculation of Basic Services Compensation. The Basic Services Compensation shall be paid in accordance with the terms set forth herein and as further set forth in accordance with each Work Authorization.
- 4.2.2 Expansion or Decrease in Services. The Owner reserves the right to expand or decrease the Scope of Services and/or extend the Term and duration of Basic Services under this Agreement.
- 4.3 INVOICES. The Program Manager shall submit invoices no more than monthly to the Owner for payment of the Basic Services Compensation as in the relevant Work Authorization and any approved Additional Services and Reimbursable Expenses. If requested by the Owner, the Program Manager shall attach to its invoices information related to the Services covered under that invoice with such information documenting the Projects on which the Program Manager worked during that period, the tasks performed during that period, and any other relevant information the Owner reasonably may request be included on the invoices.
- 4.4 PROMPT PAYMENT. Owner shall pay Program Manager promptly, within forty-five (45) calendar days of the later of the date the performance of the service under the Agreement is completed or the date the Owner receives an invoice, for all amounts not disputed under the Agreement. The Owner may withhold from payments required no more than 110 percent of the disputed amount. Owner shall include in such notice a detailed statement of the amount of the invoice which is disputed. Invoices for which payment has not been received by Program Manager shall be subject to interest amounts in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code. Program Manager shall pay any Sub-Consultants and subcontractors the appropriate share of a payment received from the Owner not later than the tenth (10th) day after the date the Program Manager receives the payment.
- 4.5 PAYMENT DISPUTE. Owner shall notify Program Manager of the reason and amount of any disagreement with billings, including, but not limited to, any known failure of the Program Manager to perform services in accordance with this Agreement, within of the time required by law after the receipt of the invoice in question.
- 4.6 ADDITIONAL SERVICES COMPENSATION. Additional Services Compensation shall be determined and paid in accordance with the provisions of Article 7 and paid in the same manner as set forth in this Agreement, including Section 4.5.
- 4.7 ADDITIONAL CONDITION FOR INCREASE IN COMPENSATION. Notwithstanding anything in this Agreement, Owner's Board of Trustees, by majority vote, is the only representative of the Owner having the power to approve work authorizations or increases to compensation.
- 4.8 EXPENSES. Owner shall not be charged any reimbursable expenses resulting from Basic Services except as allowed in a particular Work Authorization. No Expenses shall be chargeable to the Owner unless such costs are specifically agreed between Owner and the Program Manager prior to performance of Basic Services and if requested by Owner, the

Program Manager will provide evidence of payment and other supporting documentation related to such Expenses.

5. TERM OF THE AGREEMENT; DURATION OF BASIC SERVICES

- 5.1 TERM OF THE AGREEMENT. The term of this Agreement (“Term”) shall commence on the Effective Date and expire on the date that is three (3) years from the Effective Date (“Expiration Date”), or in the case of an individual Work Authorization, until the end of the Work Authorization’s term, whichever is later, unless otherwise terminated sooner pursuant to the terms herein.
- 5.2 EXTENSION OF THE TERM. The Parties may agree to extend the Term in accordance with Article 11 of this Agreement or by mutual written agreement approved by the Owner’s Board of Trustees and Program Manager.

6. OWNER'S RESPONSIBILITIES

- 6.1 OWNER'S DECISIONS; APPROVALS. The Owner agrees to review the information submitted by the Program Manager to the Owner and provide input or decisions as may be applicable on a timely basis in order to avoid delay in the progress of the Work and Services. The Owner shall furnish information that may be necessary for the Program Manager to perform its Services and shall provide approvals for orderly progress of the Work. If the Program Manager knows of a particular item on which a decision, information, or approval is needed from the Owner, the Program Manager shall notify the Owner of that need in writing.
- 6.2 INFORMATION, SURVEYS, REPORTS. The Owner shall retain separate consultants to perform environmental/hazardous material assessments and if applicable, mitigation efforts; geotechnical and surveyor services; and structural, mechanical, chemical, electrical, conductivity, and other laboratory tests, inspections and reports as deemed necessary by the Owner.
- 6.3 NOTICE OF FAULT OR DEFECT. If the Owner’s Representative obtains actual knowledge of any fault or defect in the Program, the Work on the Projects, or the nonconformance with the Construction Contract Documents, the Owner will provide to Program Manager prompt written notice of the fault, defect, or nonconformance.
- 6.4 DESIGN TEAM AGREEMENTS. The Owner shall retain and contract separately with the Design Team members for design services.
- 6.5 PROGRAM CONSTRUCTION BUDGET. The estimated Program construction budget for each of the Projects is set forth in each Work Authorization. The Program construction budget for each of the Projects are subject to amendment and adjustment during the Term.
- 6.6 CONTRACTOR AGREEMENT. The Owner shall retain and contract separately with the Contractors doing any part of the Work on the Projects.

- 6.7 CONSTRUCTION CONTRACT DOCUMENTS. Owner will provide a copy of the final, executed Construction Contract Documents to the Program Manager and will coordinate with the Program Manager the number of copies of the Construction Contract Documents that may be needed for the members of the Project Team.
- 6.8 PERMITS AND LICENSES. The Program Manager shall not be obligated to pay for any necessary permits, licenses, fees, approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.
- 6.9 OWNER'S REPRESENTATIVE. The Owner shall designate an employee to act in the Owner's behalf with respect to the Program (“Owner’s Representative”). This person will be available during working hours as reasonably necessary to examine information submitted by the Program Manager, to render decisions subject to those that may require approval from the Owner’s Board of Trustees, to furnish information in a timely manner, to provide assistance regarding Owner’s requirements, expectations, and the Program, and otherwise serve as liaison between the Owner and the Program Manager. The Owner is a public body and as such, the Parties acknowledge that certain decisions of the Owner may be made only by the Owner’s Board of Trustees or the Superintendent or their designee, including approval for Work Authorizations and an increase in Total Compensation, and execution of contracts that bind the Owner. This provision does not require the Owner’s Representative to perform acts appropriately reserved for the Board of Trustees or their designee.

7. CHANGES IN SERVICES AND PROGRAM

- 7.1 CHANGES IN THE GENERAL SCOPE OF PROGRAM. The Owner reserves the right to modify, by addition or reduction, the scope and duration of the Program, with an appropriate corresponding adjustment in the Basic Services that may result from an increase in Actual Costs. Owner will not pay for any Additional Services without a written agreement determining the cost of those services. Should Owner agree to Additional Services not included in the Basic Services, Owner will pay Additional Services Compensation as described in this §7. For clarity, items defined as additional services in contracts between Owner and contractors, architects, engineers, and other third parties will still receive the program management services contemplated as Basic Services by this Agreement at no additional cost above the amount specified in each Work Authorization, unless amended in writing by the parties.
- 7.2 ADDITIONAL SERVICES COMPENSATION. The amount of Additional Services Compensation for Services that are not Basic Services shall be agreed upon between the Owner and Program Manager and set forth in a written amendment to any Work Authorization and executed by the Owner and the Program Manager. The amendment shall include a description of the Additional Services performed and the amount of and basis for the amount of Additional Services Compensation to be paid to the Program Manager. Additional Services performed by Program Manager’s employees will result in Additional Service Compensation according to the hourly rates provided in Attachment B Hourly Rate Schedule, provided that all Additional Services must be agreed in writing prior to

performance. When negotiating an amendment for Additional Services, the Program Manager shall provide to the Owner a list of the Additional Services expected to be required, an estimate of the time required to perform such Additional Services, expenses pursuant to Article 7.4 (“Expenses”) expected to be incurred, and the professional consultant's fees and expenses pursuant to Article 4.9 (“Professional Consultant Costs”) that the Program Manager believes will be required.

- 7.3 PROFESSIONAL CONSULTANTS. As part of the Additional Services Compensation, Program Manager will include the actual costs paid to third party Professional Consultants retained by the Program Manager for such Additional Services with no markup. The Owner shall not be liable for payment to the Program Manager of any Professional Consultant Costs unless agreed to in writing by Owner prior to performance of any Additional Services.
- 7.4 PAYMENT FOR SERVICES UNDER THIS ARTICLE. The Program Manager shall submit invoices for the Additional Services Compensation, Expenses, and Professional Consultant Costs, if approved in advance in writing by Owner, which shall be paid in the same manner as set forth in Article 4 of this Agreement and conditioned as set forth in Section 4.1 and this Article 7.

8. NOTICES

- 8.1 NOTICES. All notices, demands, and requests and other communications required or permitted hereunder shall be in writing, shall be sent by certified mail, return receipt requested; by courier; or by electronic communications including email and telephonic facsimile and shall be deemed to be delivered (i) upon first attempted delivery if sent by mail or by courier and (ii) upon transmittal if sent by electronic communications. The Parties’ respective addresses for purposes of this Agreement, and to which all notices required hereunder shall be sent, are as follows:

To Owner: Galveston Independent School District
Attn: Superintendent of Schools
3904 Avenue T
Galveston, Texas 77550
(409) 766-5100 (Office)
Email: jerrygibson@gisd.org

With a copy to: Thompson & Horton, LLP
Attn: John Hopkins
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027
713-554-6760 (Office)
713-583-9928 (Fax)
Email: jhopkins@thompsonhorton.com

To Program Manager: Bill Coltzer Jr.
CEO

Zero/Six Consulting LLC
1027 23rd Street Rear
Galveston, Texas 77550
(409) 740-0090 (Office)
Email: bcoltzer@z6consulting.com

9. INSURANCE

- 9.1 PROGRAM MANAGER'S INSURANCE. The Program Manager shall purchase and maintain for the full Term of this Agreement, including any extension hereof, insurance for protection from claims and its liabilities in the amounts and types set forth in this Article 9 and Attachment A – Insurance Schedule hereto which is incorporated and agreed to for all purposes by the Parties.
- 9.2 CERTIFICATE OF INSURANCE. Certificates and endorsement evidencing Program Manager's compliance with the insurance requirements under this Article 9 and in a form acceptable to the Owner shall be provided by the Program Manager to the Owner upon execution of the Agreement.
- 9.3 ADDITIONAL INFORMATION ON GENERAL LIABILITY INSURANCE. General liability insurance shall be on an occurrence basis. The coverage afforded thereby shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.
- 9.4 INSURANCE COMPANIES. Insurance companies shall be legally licensed and admitted or authorized through the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas. All insurance companies shall have an "A-VIII" in Bests Rating Guide and shall be satisfactory to the Owner.
- 9.5 ADDITIONAL INSURED. The Owner shall be added as an additional insured / loss payee on all policies required under this Article 9 except for the Workers Compensation insurance and the professional liability/ errors and omissions insurance.
- 9.6 WAIVER OF SUBROGATION. With respect to the coverage described in this Article 9, except for Professional Liability, whenever any loss, cost, damage or expense occurs that is a covered loss in whole or part under the Program Manager's insurance hereunder, then the Program Manager's insurance shall be primary and the Program Manager will cause its insurance company to waive any right of subrogation which otherwise might exist in or accrue on account thereof; provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof.

10. INDEMNIFICATION/RELEASE/DAMAGES

- 10.1 INDEMNIFICATION BY PROGRAM MANAGER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROGRAM MANAGER AGREES TO AND HEREBY

DOES INDEMNIFY AND HOLD HARMLESS THE OWNER AS WELL AS ITS TRUSTEES, EMPLOYEES, DESIGNATED REPRESENTATIVES, OFFICERS, DIRECTORS, FROM AND AGAINST OBLIGATIONS, DEBTS, LIABILITIES, LOSSES, DAMAGES, CLAIMS, COSTS, LAWSUITS, AND/OR JUDGMENTS (COLLECTIVELY “CLAIMS”) TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OR BREACH OF THE PROGRAM MANAGER UNDER THIS AGREEMENT, INCLUDING ANY REASONABLE ATTORNEYS' AND/OR ACCOUNTING FEES, AND COSTS OF COURT, INCURRED BY THE OWNER AND FOR ALL CLAIMS FOR DAMAGES TO PROPERTY OR FOR INJURY TO ANY PERSON OR PERSONS TO THE EXTENT CAUSED BY THE PROGRAM MANAGER’S WILLFUL MISCONDUCT, NEGLIGENCE (EITHER SIMPLE OR GROSS), OR BREACH OF ANY OF THE OBLIGATIONS OR STANDARDS SET FORTH IN THIS AGREEMENT. The indemnity obligations of Program Manager under this Section 10.1 shall survive expiration or earlier termination of this Agreement.

11. TERMINATION AND SUSPENSION

- 11.1 TERMINATION FOR CONVENIENCE. This Agreement may be terminated by Owner for its convenience, without penalty or default, upon thirty (30) days written notice to the Program Manager. In conjunction with such termination, the Owner may further instruct Program Manager to cease performing services at any time, and no such additional fees shall be incurred by Owner after such notice to cease is issued by Owner.
- 11.2 TERMINATION FOR CAUSE. This Agreement may be terminated by either Party due to a breach or default by the other Party. In the event that either Party believes the other Party has failed to perform or is otherwise in breach or default of this Agreement, then the aggrieved Party shall provide the Party alleged to be in default written notice specifying the breach and providing the Party a reasonable opportunity to cure the breach. Should the Party receiving the notice fail to cure the breach or substantially to perform in accordance with the terms of this Agreement within thirty (30) days of receiving such notice (provided that if the Party alleged to be in breach uses good faith efforts to cure, the other Party may extend the time to perform), then the Party alleging the breach may terminate this Agreement at the end of such thirty (30) day period.
- 11.3 EFFECTS OF TERMINATION. In the event of a termination for convenience under Article 11.1, the Owner shall pay the Program Manager the undisputed amount owed but not yet paid for the Services performed up to the date of termination, or up to the date of notice from Owner to stop services, whichever is earlier. In the event of termination for cause under Section 11.2, the non-breaching Party may pursue any remedy in equity or at law that is permitted under this Agreement or Applicable Law. Termination of this Agreement shall not relieve Program Manager or any of its employees of liability for violations of this Agreement, any negligent act or omission of Program Manager, and the provisions of indemnity, warranty, liability, waivers, or assurances made in this Agreement, along with any other provisions related to liabilities and obligations of Program Manager shall survive past the termination date. In the event of termination under this Article or otherwise, Program Manager hereby consents to employment by Owner of a substitute Program Manager to complete the services under this Agreement.

- 11.4 SUSPENSION ORDERED BY OWNER. Upon written notice, the Owner may order the Program Manager to suspend, delay, or interrupt all or any part of the Services on the Program or for Work being performed by a Contractor on the Projects for a period of up to sixty (60) day for the convenience of the Owner or because of events beyond the control of the Owner or the Program Manager. Any time after the sixty (60) day suspension period, the Program Manager, at its sole option, may elect to terminate this Agreement or remobilize Work on the Program or that portion of the Program and resume the Services that had been suspended. The Program Manager shall restore its construction site personnel and office personnel to its former size as quickly as is reasonably feasible upon its election to remobilize. Program Manager personnel assigned to another project during the suspension period and not available to return to the Program upon the conclusion of the suspension, delay, or interruption shall be replaced by new personnel so long as such personnel meet the qualifications set forth in Section 2.4 and are acceptable to the Owner.
- 11.5 SUSPENSION OF WORK FOR HAZARDOUS MATERIALS. Except in the event that Program Manager and/or its Professional Consultants are directly responsible for introducing Hazardous Materials to the site, the Program Manager shall have no responsibility for the discovery, presence handling, removal or disposal of, or exposure of persons to Hazardous Materials considered as such under Environmental Laws. In the event the Program Manager discovers or is notified by a Contractor that there are materials that reasonably are believed to be Hazardous Materials that have not been rendered harmless and which are not part of the Work to be performed by the Contractor on the one of the Projects, the Program Manager immediately shall stop Work in the affected area and report the condition to the Owner in writing. The Work in the affected area shall resume in accordance with the Construction Contract Documents. The Owner shall not require the Program Manager to perform any Services relating to Hazardous Materials without the prior written consent of the Program Manager. In the event of any suspension, delay, or interruption of any or all of the Services provided on the Program pursuant to this Section 11.5, the Term or duration of Basic Services may be extended by a period of time corresponding to the impact such suspension has on the completion of all of the Work on the Projects if the Contractor is unable to overcome the delays on the Project or Projects so as to get the Project back on schedule and the Owner agrees to an extension of the Term and duration of Basic Services subject to approvals as set forth in this Agreement. For purposes of this Agreement, the term "Hazardous Materials" means pollutants, contaminants and other materials, substances and wastes which are hazardous, toxic, caustic, harmful or dangerous to human health or the environment, including (a) petroleum or petroleum products and polychlorinated biphenyls; (b) any flammable substances or explosives; (c) all asbestos (friable or non-friable) and lead-based paint; and (d) any substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "solid waste," "toxic chemicals," "toxic pollutants," "contaminants," "pollutants," under any Environmental Law. For purposes of this Agreement, the term "Environmental Law" or "Environmental Laws" mean any federal, state, or local laws, ordinances, codes, rules, regulations, judicial or administrative orders or judgments, governing, addressing, or imposing liability for use, storage, treatment, handling, disposal, or other standards of conduct with respect to or otherwise relating to (i) protection of human health, natural resources, or the environment; or (ii) manufacturing, processing, distribution, use, treatment, storage, disposal, release or threatened release,

spilling, leaking, pumping, pouring, emitting, injecting, depositing, discharging, escaping, dumping, leaching or leaking of Hazardous Materials (as herein defined). Such laws shall include, but not be limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9.601 et. seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 69.01 et. seq.); the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; the Safe Drinking Water Act, and in the regulations adopted in publications promulgated pursuant to the foregoing acts.

- 11.6 EFFECT OF DELAY OR SUSPENSION. Except as otherwise set forth herein, a suspension, delay or interruption of the Services on the Program or the Work on the Projects shall not operate to terminate or void this Agreement.
- 11.7 REMOVAL OF PROJECT FROM SERVICES. The Owner at its sole discretion reserves the right to remove any of the Projects or any phase of any of the Projects from the Scope of Services of Program Manager contained in this Agreement. When Owner removes a Project, or phase of a Project, from the Scope of Services, Owner will compensate Project Manager for any Actual Costs incurred up to the time of the removal of the Project, or phase of the Project, from the Scope of Services. The Owner shall only be liable for undisputed fees already incurred by the Program Manager on the removed Scope of Service(s). If the Owner removes a portion of the Work in its sole discretion, the value of which cannot be determined by reference to the Construction Contract Documents for the Project, the amount of the fee reduction shall be a reasonable amount as mutually agreed upon by Owner and Program Manager.

12. DISPUTE RESOLUTION

- 12.1 NON-BINDING MEDIATION. If a dispute arises out of or relates to this Agreement, or its alleged breach, and if that dispute has not been settled through direct discussions within a reasonable period, except in the event that mediation would pose a hardship on either of the Parties or cause a Party to lose substantial rights under this Agreement or under Applicable Law, the Parties agree to mediate the dispute prior to resorting to litigation. The Parties will agree on a mediator and shall share in the expenses of mediation. Mediation shall not be subject to the American Arbitration Association rules or any similar rules or procedures except as may be agreed to by the Parties at the time of mediation. The Owner expressly rejects any binding dispute resolution except for suit through a court of competent jurisdiction. At all times during the course of any dispute resolution process, the Program Manager shall continue diligently and without delay to perform the services and obligations of the Agreement.

13. SUCCESSORS/ASSIGNMENT/THIRD PARTIES

- 13.1 SUCCESSORS. This Agreement shall inure to the benefit of and be binding on the heirs, successors, permitted assigns, trustees, and personal representatives of the Program Manager.

- 13.2 ASSIGNMENT. Neither the Owner nor the Program Manager shall assign, sublet or transfer its interest in this Agreement or any of the obligations or liabilities of that Party under this Agreement without the written consent of the other Party. Program Manager may not assign accounts receivable to a commercial bank or financial institution for securing loans without the prior approval of the Owner.
- 13.3 NO THIRD-PARTY BENEFICIARIES. This Agreement is made for the sole benefit of the Owner and the Program. Nothing in this Agreement will create or be deemed to create a relationship between the Parties to this Agreement and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

14. ADDITIONAL PROVISIONS

- 14.1 OWNERSHIP OF DOCUMENTS AND RECORDS. All documents, Drawings, Plans and Specifications, work-product, reports, Program documents, data, and other documents, including any deliverables created, prepared, or compiled by the Program Manager, any member of the Design Team, and/or any Professional Consultant with whom the Program Manager has contracted in connection with the Services to be provided under this Agreement (collectively "Work-Product") shall become the Owner's property upon proper payment for the Program Manager's Services for work already performed hereunder. To this end, Program Manager agrees to include in all agreements and contracts with Professional Consultants provisions whereby the design consultant or other person agrees to assign, grant, transfer, and convey to Owner, its successors and assigns, that person's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration and confirms that Owner shall own all right, title, interest in and to, including the right to use and reproduce, to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "Work Made for Hire" as defined in 17 U.S.C. § 201 (b). Upon expiration or earlier termination of this Agreement, the Program Manager shall deliver to the Owner all Work Product; return to the Owner all documents and records provided by the Owner which are in the Program Manager's possession or control; and shall deliver all Program files maintained by the Program Manager for the Program. However, the Program Manager shall be allowed to make copies of all such documents, records, information and material. Notwithstanding the foregoing, Program Manager shall bear no liability or responsibility for Work-Product that has been modified post-delivery or used for a purpose other than that for which they were prepared under this Agreement. They are not to be used by any person or entity other than Owner on other projects unless expressly authorized by Owner. The 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 the Project. Notwithstanding any provision to the contrary, contained in this Agreement, Program Manager and its lower tier consultants shall retain sole ownership to their preexisting information including but not limited to computer programs, software, standard details, figures, templates and specifications.
- 14.2 GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the law of the State of Texas without regard to its choice of law or conflict of laws

provisions. Exclusive venue of any dispute shall be in a court of competent jurisdiction in Galveston County, Texas.

- 14.3 ENTIRE AGREEMENT. This Agreement, including all attachments represents the entire and integrated agreement between the Owner and the Program Manager and except as set forth herein supersedes all prior negotiations, representations or agreements, either written or oral. In the event of any conflict between the components of the Agreement, the documents will have the following precedence: (1) this Agreement; (2) an attachment to this Agreement.
- 14.4 MODIFICATION OF AGREEMENT. This Agreement may be amended only by written instrument signed by both the Owner and the Program Manager.
- 14.5 SEVERABILITY. If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 14.6 CALENDAR DAYS. Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 14.7 HEADINGS. The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 14.8 INTERPRETATION OF CERTAIN WORDS. For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 14.9 COUNTERPARTS; ELECTRONIC SIGNATURES AND TRANSMISSION. The Parties agree that this Agreement may be executed in identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one document; provided each of the Parties hereto executes at least one counterpart. A facsimile or other electronic signature to this Agreement shall be enough to prove the execution hereby by any Party. The Parties consent to the transmission of copies of this Agreement and any documents related to this Agreement by electronic means and intend that the Texas Electronics Transaction Act will apply to this transaction.
- 14.10 CONFIDENTIALITY AND PUBLIC INFORMATION. Subject to the Texas Public Information act, if the Program Manager or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Program, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information. Otherwise, information that the

Parties would reasonably expect to remain confidential should be kept in confidence by the receiving party absent legal obligations to disclose it. Program Manager acknowledges that Owner is subject to the Texas Public Information Act (TPIA). As such, upon receipt of a request under the TPIA, Owner is required to comply with the requirements of the TPIA. In the event that the request involves documentation that the Program Manager has clearly marked as confidential and/or proprietary, Owner shall provide the Program Manager with the notices required under the TPIA. Program Manager acknowledges that it has the responsibility to file exceptions with the Texas Attorney General's Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure. Program Manager also acknowledges to assist Owner insofar as necessary to comply with Owner's own obligations under the TPIA.

14.11 FELONY NOTIFICATION.

14.11.1 Pursuant to Texas Education Code Section 44.034, Program Manager must give advance written notice to Owner if an owner or operator of Program Manager has been convicted of a felony. Program Manager represents and warrants that no owner, operator, shareholder, officer or director of Program Manager has been convicted of a felony. Should it become known to Program Manager that any owner, operator, shareholder, officer or director is convicted of a felony while this Agreement is in effect, Program Manager will immediately notify Client of such conviction. Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application 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. Pursuant to Sections 22.085 and 22.0834 of the Texas Education Code, Program Manager hereby certifies that all employees, consultants and volunteers of the Program Manager who have continuing duties related to the contracted services; and has or will have direct contact with students have passed a national criminal history background record information review as required by those sections. Failure to comply with the provisions of this paragraph constitutes a default under this Agreement, entitling Owner to terminate this Agreement for cause.

14.11.2 To the extent permitted by law, Program Manager will obtain all required national Criminal History Record Information ("CHRI"), pursuant to Texas Education Code section 22.0834 and Texas Government Code 411.082(a), on all employees, subcontractors of every tier ("Subcontractor"), Subcontractor's employees, independent contractors, applicants, agents, or consultants, if (1) the person will have continuing duties related to the Project and (2) the duties are or will be performed on Owner's property and the person(s) will or may have direct contact with students ("Covered Employee"). Program Manager shall assume all expenses for obtaining CHRI. Any Covered Employee shall be disqualified and prohibited from performing any contract duties or services if that Covered Employee has been convicted of one of the following offenses, if at the time of the offence the victim was under eighteen (18) or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to

register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History"). The Program Manager shall certify to the Owner in writing that it has complied with this section and that none of its Covered Employees have a Disqualifying Criminal History on a form provided by the Owner. Program Manager agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses during the performance of this contract, Program Manager will immediately remove the Covered Employee from Owner's property or other location where students are regularly present, and notify the Owner of said removal within three (3) days of doing so. Program Manager understands that any failure to comply with the requirements of this section may be grounds for termination of the contract. Instructions for complying with CHRI requirements are available from the Owner. To any extent Program Manager is not permitted by law or regulatory authorities to perform any of the forgoing tasks, Program Manager shall fully cooperate with Owner to provide all needed information, fingerprints and other assistance to allow Owner to carry out the necessary steps in the criminal history review process.

14.12 APPLICABLE LAWS. Program Manager and its subcontractors and agents agrees to comply with all applicable requirements of all federal laws, executive orders, regulations, applicable guidelines, and policies governing this program and Agreement, particularly relating to nondiscrimination. These include but are not limited to: (i) Title VI of the Civil Rights Act of 1964, as amended; (ii) Title IX of the Education Amendments of 1972; as amended; (iii) Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and (iv) the American with Disabilities Act, as amended.

14.13 GOVERNMENTAL IMMUNITY. Notwithstanding anything else in this or any other Agreement between the Parties, neither Party waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and/or agents as a result of its execution of this Agreement and performance of the functions or obligations described herein. Furthermore, nothing in this Agreement shall be construed to create a claim or cause of action against either Party for which it is not otherwise liable, or to waive any immunity or defense to which either Party may be entitled, or to create an impermissible deficiency debt of either Party.

14.14 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION.

14.14.1 By executing this Agreement, Program Manager verifies that pursuant to Texas Government Code Chapter 2271, it does not, and will not for the term of this Agreement, boycott Israel or any Israeli-controlled territory. The Program manager further verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Program Manager has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement. The Program Manager further verifies to the Owner that the Program Manager does not boycott energy

companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement. The Program Manager further represents and warrants to the Owner that the Program Manager does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

14.15 FUNDING OUT. Any/all contracts exceeding one (1) year, including this Agreement, will require a standard “funding out” clause, substantially similar to the one below. Program Manager agrees to the funding out clause below.

“A contract for the acquisition, including lease, of real or personal property is a commitment of the District’s current revenue only, provided the contract contains either or both of the following portions:

1. Retains to the District the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.
2. Is conditioned on a best efforts attempt by the District to obtain and appropriate funds for payment of the contract.”

14.16 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J.

Pursuant to Texas Government Code 552, Subchapter J, Program Manager agrees to be bound by the following terms if the Agreement has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the Owner or if the Agreement 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 Program Manager. If the Owner receives a written request for public information related to this Agreement that is in the possession or custody of Program Manager and not in the possession or custody of the Owner, the Owner shall send, not later than the third business day after the date the Owner receives the written request, a written request to Program Manager that Program Manager provide that information to the Owner.

Program Manager must:

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

- .2 Preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner.
 - .4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Agreement, and Program Manager agrees that the Agreement can be terminated if Program Manager knowingly or intentionally fails to comply with the requirements of that subchapter.
 - .5 Further, under Texas Government Code Chapter 552.372(c), the Owner may not accept a bid for or awarding of a contract to an entity that the Owner has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the Owner determines and documents that the entity has taken adequate steps to ensure future compliance.
 - .6 If Program Manager fails to provide to the Owner the requested information, Texas Government Code Chapter 552.373 requires the Owner to notify Program Manager in writing of the failure and allow 10 business days to cure the violation. Owner may terminate the Agreement if Program Manager fails to remedy the failure, Owner determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.
- 14.17 The Program Manager shall have the right to include photographic or artistic representations of the design of the Project among the Program Manager's promotional and professional materials, subject to Owner's right to object to any specific use in Owner's discretion and provided Program Manager shall provide Owner written notice of any new materials making such use at least thirty (30) days prior to such use. For clarity, once Program Manager has provided Owner written notice of the substantive contents of the proposed use, Program Manager is not required to provide specific notice of each re-use of such materials, such as repeat use in project proposals or other promotional materials. The Program Manager shall be given reasonable access to the completed Project to make such representations. However, the Program Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Program Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner, in its discretion, may provide professional credit for the Program Manager in the Owner's promotional materials for the Project. This Section shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause.
- 14.18 ATTACHMENTS. This Agreement consists of this Agreement and all of its attachments, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form this Agreement and are as fully a part of this Agreement as if attached to this Agreement or repeated herein. All attachments are incorporated hereby for all purposes. Attachments include:
- Attachment A: Insurance Schedule
Attachment B: Hourly Rate Table

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the latest date signed below.

Owner:

**GALVESTON INDEPENDENT
SCHOOL DISTRICT**

Program Manager:

ZERO/SIX CONSULTING, LLC

By: _____
Dr. Jerry Gibson
Superintendent

By: _____
Brian Coltzer
CEO

on: _____

on: _____