

**MASTER AGREEMENT FOR PROGRAM MANAGEMENT SERVICES
BETWEEN**

ECTOR COUNTY ISD AND

GALLAGHER CONSTRUCTION COMPANY, LP

Dated: June 18, 2024

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MASTER AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

This **MASTER AGREEMENT FOR PROGRAM MANAGEMENT SERVICES** (the "Agreement") is made and entered into by and between:

Ector County Independent School District, a Texas public school district, with its central administrative office located at 802 North Sam Houston Avenue, Odessa, TX 79761 ("Owner"), and Gallagher Construction Company, LP, a domestic limited partnership located at 3501 Token Drive, Suite 100, Richardson, Texas 75082 ("Program Manager").

This Agreement shall become effective on the date it is executed by the last party to execute it (the "Effective Date"). On and after the Effective Date, rights and obligations hereunder shall accrue only in connection with a Project covered by a Project Order ("Project Order") executed by the Owner and the Program Manager, and then, only to the extent thereof. While the Owner intends to authorize the Program Manager from time to time to perform project management services for the Owner pursuant to Project Orders, nothing herein shall require the Owner to assign any specific Project to the Program Manager. A listing of all Projects that may be assigned to the Program Manager are included in Exhibit A. The Owner's Capital Improvement Plan ("CIP") will be developed and incorporated at a later date. CIP will also be available for review on the Owner's website; provided, however, that the CIP is subject to modification by addition, deletion, or elimination, or revision at the Owner's sole discretion. The Owner reserves the right in its sole discretion to determine which Project assignments are appropriate to be performed by the Program Manager under this Agreement. Except as otherwise provided herein, Program Manager's Services in connection with a Project shall conclude one year following final completion of a Project covered by a Project Order unless otherwise provided in such Project Order or in an amendment thereto.

The term of this Agreement shall commence on the Effective Date and shall conclude on upon completion of the projects listed within this Agreement.

For and in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Program Manager agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "Additional Services" means those services, duties, obligations and responsibilities set forth in Article 5 of this Agreement.

1.2 "Applicable Laws" means all laws, statutes, ordinances, codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies, relating to or affecting a Project, including environmental, health, safety, building, and employment laws, and the Ector County ISD Board Policies.

1.3 "Basic Services" means all Services required of Program Manager by this Agreement, excepting only Additional Services.

1.4 "Change Order" means a written order to Program Manager executed by Owner in accordance with Article 8 of this Agreement authorizing and directing an addition to, deletion from, adjustment, revision, or a combination thereof, to the Services required of, or the compensation payable to, Program Manager.

1.5 "Construction Contract" means a contract between Owner and a Contractor for the performance of all or any portion of the Work for a Project, including all documents defined by such contract as "Contract Documents", all documents incorporated into such contract by reference, and all additional documents, if any, defined by such contract as constituting a part thereof.

1.6 "Construction Phase" means the phase of a Project commencing upon the completion of the Design Phase, or any particular phase thereof if Owner has approved staging of the design in phases, or the award of the first

Construction Contract for such Project, whichever occurs first, and ending upon Owner's execution of a Certificate of Final Completion for such Project. With respect to a Design/Build Project, "Construction Phase" means the phase of a Project commencing upon the completion of the Design Phase, or any particular phase thereof if Owner has approved staging of the design in phases, and ending upon Owner's execution of a Certificate of Final Completion for such Project.

1.7 "Contractor" means a person or entity, including, without limitation, general contractors, trade or specialty contractors, and construction managers, with whom Owner contracts for performance of all or part of the Work for a Project.

1.8 "Design Contract" means a contract between Owner and a Project Architect for design of a Project and performance of related services, and includes all documents incorporated into such contract by reference and all documents defined by such contract as constituting a part thereof.

1.9 "Design For Construction" means the complete and final design and construction documents, including, without limitation, plans, drawings, specifications, manuals, related materials, and all addenda, changes, and modifications thereto, prepared or provided by a Project Architect pursuant to a Design Contract for use in constructing a Project, or any particular phase thereof if Owner has approved staging of the design in phases, performing the Work for such Project, or such phase if applicable, and rendering such Project, or such phase if applicable, fully operational and usable for its intended purpose.

1.10 "Design Phase" means the phase of a Project commencing with the execution of a Design Contract for such Project, or Owner's authorization to the Project Architect to commence design services for such Project, whichever occurs first, and ending upon completion of the Design for Construction for such Project, or any particular phase thereof if Owner has approved staging of the design in phases.

1.11 "Execution Plan" means the manual of processes and procedures adopted and utilized by Owner to monitor projects.

1.12 "Final Completion" means the completion of all Work required by, and in strict compliance with, the Construction Contract for a Project, including start-up, testing, permitting, and all preparations necessary to open and operate such Project for its intended purpose.

1.13 "Including", "Includes", and their derivatives are not intended as terms of limitation, and shall be deemed in each instance to be followed by the phrase "without limitation."

1.14 "Owner's Representative" means the individual named by Owner, in writing, to act on Owner's behalf in the administration of this Agreement. The Owner's Representative is Superintendent Mr. Scott Carman, or designee.

1.15 "Preliminary Design" means all design documents constituting the preliminary design of a Project as required by and defined in the Design Contract for such Project.

1.16 "Project" means a city facility, school facility or other facility design and construction or renovation or addition undertaking.

1.17 "Project Architect" means a person or entity with whom the Owner contracts for design of a Project and performance of related services.

1.18 "Reimbursable Expenses" means, and shall be limited to, those items set forth in Exhibit "A", attached hereto.

1.19 "Services" means all the services, duties, obligations and responsibilities required of Program Manager pursuant to the terms of this Agreement.

1.20 "Subcontractor" means any person or entity hired by Program Manager to perform any portion of the Services.

1.21 "Substantial Completion" means that point at which, as certified in writing by the Project Architect, a Project is at a level of completion in strict compliance with the Construction Contract such that the Owner can enjoy beneficial use or occupancy, and can use or operate it in all respects, for its intended purpose.

1.22 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by a Construction Contract for the purpose of achieving the desired and essential functions of Owner's Project at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality and safety. "Life Cycle Cost" means the sum of all costs of a Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance, and salvage/resale value.

1.23 "Work" means any and all labor, supervision, and work required by a Construction Contract to construct, test, certify, permit and render a Project, and every component thereof, operational and usable for its intended purpose.

ARTICLE 2

REPRESENTATIONS

2.1 Specific Representations. By executing this Agreement and undertaking to perform its services under a Project Order, Program Manager makes the following express representations to Owner upon which Owner may fully rely:

2.1.1 Program Manager is professionally qualified to act as Program Manager for the Project and has authorizations necessary to act as Program Manager for the Project and to perform the Services required hereunder.

2.1.2 Program Manager has become familiar with the local conditions under which the Project is to be implemented.

2.1.3 Program Manager has the skill, capability and experience, including sufficient qualified and competent personnel, to effectively, efficiently and timely perform the Services and manage the Project, and Program Manager will continuously furnish sufficient personnel to progress the Project and perform the Services in a timely and proper manner.

2.1.4 Program Manager shall comply with all Applicable Laws governing the performance of the Services.

2.1.5 Program Manager assumes full responsibility to Owner for the acts and omissions of its officers, employees, agents, Subcontractors, consultants, and others employed or retained by it in connection with the Project and performance of the Services.

2.1.6 Unless Program Manager is a licensed architect or professional engineer, Program Manager shall not engage in acts which constitute the practice of architecture and/or engineering, as defined by Texas law.

2.1.7 Program Manager shall maintain a working relationship with the Project Architect, Contractor, and Design Consultants on behalf of the Owner. However, the Program Manager will not be responsible for the Contractor's means, methods, sequences, procedures on safety practices, or security in connection with the Project, or for the adequacy or accuracy of the project design.

2.2 Enumerated Representations Not Exhaustive. Nothing contained in this Article 2 shall in any manner supersede, limit, or restrict any other duty, responsibility, representation, or warranty created by this Agreement or by law.

ARTICLE 3

PROGRAM MANAGER'S PERFORMANCE: GENERAL PROVISIONS

3.1 Standard Of Care. Program Manager shall perform all Services at a level, and to a standard of care, consistent with the standards and quality prevailing among recognized Project and construction management firms of superior knowledge, skill and experience engaged in Projects of similar size and complexity. Program Manager shall carry out and complete all Services in an efficient, thorough, timely and economical manner, and in strict accordance with the terms of this Agreement, the Contract Documents, the Project Manual, and the Construction Documents.

3.2 Owner's Agent. Program Manager shall be Owner's agent in performing the Services, shall promote and protect Owner's interests, and shall have a fiduciary obligation of undivided loyalty and trust to Owner in connection therewith. Unless otherwise directed by Owner in writing, the Program Manager shall act as Owner's agent to the Project Architect and Contractor.

3.3 Time Of The Essence. Program Manager acknowledges that time is of the essence to the Project and in the performance of Program Manager's Services. Program Manager shall perform and complete the Services in a timely manner in accordance with the Project Schedule.

3.4 Compliance With Applicable Laws. Without assuming the responsibility of the Project Architect for the accuracy, adequacy, and completeness of design, and without assuming the responsibility of the Contractor, Program Manager shall reasonably ensure that the Project is designed and constructed in a manner to meet the requirements of the Contract Documents, the Project Manual, the Construction Documents, and all Applicable Laws. Program Manager shall immediately report to Owner in writing any known actual or potential violation of any Applicable Law and any known deviation of the Contract Documents, the Project Manual, and the Construction Manual, by any person or entity, including, without limitation, the Project Architect and the Contractor.

3.5 Duty To Correct Defective Services. Program Manager shall promptly correct any errors, omissions, and deficiencies in its performance of the Services, at its own cost and without additional compensation or reimbursement, and Program Manager shall not be compensated for performing any Services necessitated by its failure to perform in accordance with this Agreement.

3.6 Program Manager's Performance Not Discharged By Duties Of Others. Program Manager's Services under this Agreement shall not be changed, altered, discharged, released or satisfied by any duty, obligation or responsibility of a Project Architect or a Contractor. Program Manager is not a third-party beneficiary of any agreement by and between Owner and a Project Architect or Contractor. It is expressly acknowledged and agreed that Program Manager's Services to Owner are independent of, and are not diminished by, any duties owed to Owner by any Project Architect or Contractor.

3.7 Cooperation With Project Architect. Program Manager shall cooperate fully with the Project Architect with respect to the duties, obligations, responsibilities and services of such Project Architect, including those set forth in any applicable Design Contract. Such duty of cooperation shall include, as the Project Architect's needs may require, furnishing information and documents to, meeting with, and consulting with the Project Architect with respect to inspection, testing, and analysis of any Work.

3.8 Program Manager Not To Perform Design Or Construction. Neither Program Manager nor any subsidiary, affiliate, or joint venture partner of Program Manager shall perform, or enter into any agreement to perform, any design or construction work in connection with the Project.

3.9 Fiduciary Duty. Program Manager represents the Owner in a fiduciary capacity and owes to Owner fiduciary duties.

ARTICLE 4

PROGRAM MANAGER'S BASIC SERVICES

4.1 Generally. During the planning, design and construction of the Project, and at all times relevant thereto, without assuming the responsibility of the Project Architect for the accuracy, adequacy and completeness of design, and without assuming the responsibility of the Contractor, Program Manager shall perform the Basic Services set forth in, or reasonably implied by or inferable from, this Article 4. Unless Owner directs otherwise in writing, and except as otherwise provided in this Agreement, Program Manager shall perform such Basic Services until construction of the Project is complete. Program Manager agrees to and accepts this scope of Basic Services.

4.2 Consultation with Owner. Program Manager shall consult in detail with Owner in order to:

- (a) Review Owner's existing facilities as applicable to the scope the Project;
- (b) Learn Owner's needs and objectives;
- (c) Review Owner's design, construction, budgetary, cash flow, and operational requirements; and
- (d) In consultation with Owner and Architect, review educational specifications for the facilities built and/or renovated to determine whether the improvements will be appropriate for the anticipated educational programs at each facility.

4.3 Review Applicable Laws, Program Manuals, and Specifications. Program Manager shall review all Applicable Laws, Program Manuals, Contract Documents, Construction Documents, and specifications, and notify Owner's Representative in writing of any areas that it becomes aware that shall affect the time or cost of the Project.

4.4 Owner's Execution Plan. Program Manager shall review and comply with Owner's Execution Plan.

4.5 Monthly Reports. Program Manager shall prepare and submit to Owner's Representative on the tenth day of each month a written report summarizing the progress of the Project during the preceding month (the "Monthly Report"). Such Monthly Report shall set forth, in detail reasonably satisfactory to Owner, significant facts and events occurring during the preceding month, such that Owner will be fully informed of the progress of the Project. The Monthly Report shall describe any problems or obstacles that may adversely affect the budget or schedule of the Project or the quality of design and construction work being performed. The Monthly Report shall include, without limitation, the following:

- (a) An update of the Project Schedule, which shall identify any delays to the Project, as well as the cause and extent of such delays, and shall make recommendations for eliminating or minimizing such delays and the effects thereof;
- (b) Updates of the Project budget and cash flow analysis, subdivided into design and construction phases for the Project, showing costs incurred in the preceding month as well as month-by-month projection and forecast of future anticipated costs and payments by Owner;
- (c) A summary of all change orders approved for the Project during the preceding month, which summary shall indicate the cost and cause of each such change order, and shall give the cumulative total costs of all change orders approved to date for the Project, expressed in gross dollars and as a percentage of the Construction Contract price;
- (d) A summary of all requests or claims for additional compensation or time extensions received from the Project Architect or Contractor.

4.6 Attendance At Meetings. Program Manager shall attend such meetings as Owner's Representative requests, and shall attend any and all other meetings as necessary to protect the interests of the Project and the Owner. In addition to all meetings Program Manager is otherwise required to attend pursuant to this Agreement,

Program Manager shall schedule and attend meetings with the Architect, the Contractor and others that Program Manager, in the exercise of its professional judgment, deems necessary or in the interests of the Project or Owner. Program Manager shall give Owner not less than forty-eight (48) hours prior written notice of any meeting scheduled by Program Manager. Owner shall give Program Manager not less than forty-eight (48) hours prior notice of any meeting scheduled by Owner.

4.6.1 At every meeting Program Manager attends, Program Manager shall keep written minutes of the meeting and distribute typed copies of same to Owner and all in attendance at such meeting, as well as anyone else Program Manager believes, in the exercise of its professional judgment, should review such minutes

4.7 Communications And Reporting. All communications from Program Manager to Owner, excepting only ordinary and routine communications, shall be in writing and shall be directed to the Owner's Representative with copies to such other persons as may be deemed from time to time. Program Manager shall establish working relationships and communication procedures among the project team members, including the Owner, Project Architect, Contractor, and subcontractors.

4.8 Document Control. Program Manager shall be responsible for the Owner's document control for the Project, including reviewing all documents received by Owner and Program Manager, copying and distribution of documents as necessary, and storage and retrieval of documents. Program Manager shall confirm that the Owner receives all documents required to be submitted to the Owner and that the Owner acquires copies of all documents that it is in the Owner's interest to receive.

4.9 Maintain Construction Contract Documents. Program Manager shall maintain on behalf of, and for use by Owner a complete and current set of all documents comprising or incorporated in the Construction Contract for the Project.

4.10 Project Reviews With Project Architect. Upon execution of a Design Contract, Program Manager shall meet with the Project Architect to review the Project Analysis, the design criteria, the Project budget, the design schedule, the Project Schedule, Applicable Laws affecting the Project, and channels for communications and reporting.

4.10.1 Twice Monthly Meetings With Project Architect. During the Design Phase of the Project, Program Manager shall meet not less than twice every month with the Project Architect to review the progress of design work and identify any delays or potential delays to the design schedule, deviation from Owner's design and budget criteria, Identify Potential Cost Savings. During and after such meetings, Program Manager shall study and evaluate the construction materials, building systems, and equipment called for in the design for the purpose of identifying any potential savings that may be achieved through Value Engineering, commonality or similarity of materials and equipment, procurement by Owner, bulk purchasing, and economies of scale. Program Manager shall also evaluate the design for the purpose of achieving maximum efficiency and cost-effectiveness in construction and installation, future expandability of the Project, Life Cycle Costs, ease of maintenance, and economy of operation.

4.11 Review Cost-Saving Recommendations With Owner. Program Manager shall consult with Owner and Architect regarding all potential cost-saving measures recommended or identified by Program Manager. Upon Owner's written authorization, Program Manager shall implement, or direct implementation of, such cost-saving measures as Owner approves.

4.12 Review And Certification Of Project Architect's Pay Requests. Program Manager shall review each pay request submitted by a Project Architect and, within seven (7) days of receiving same, certify to Owner the amount that, in Program Manager's professional judgment, is due such Project Architect pursuant to the applicable Design Contract. Such certification by Program Manager shall be a representation to Owner that the amount certified is currently owed to such Project Architect under the terms of the Design Contract and that the Program Manager knows of no reason why any portion of such amount should be withheld.

4.13 Review Of Design For Construction. Program Manager shall review the Design for Construction for the Project upon submission by the Project Architect for compliance with Project requirements and compliance with Owner's design criteria and budget.

4.14 Services During Bidding. During the bidding or proposing for construction of the Project, Program Manager shall perform the following services:

- 4.14.1 In consultation with Owner and, if applicable, the Project Architect, prepare all necessary bid and proposal forms and documents. Project Architect and/or Engineer shall prepare construction documents required in bid documents.
- 4.14.2 In consultation with Owner, prepare, give public notice of bids or proposals, and publish advertisements for bids or proposals for construction. In scheduling bid or proposal dates, Program Manager shall monitor the local construction market, noting in particular the bid or proposal dates of other significant construction projects. To the fullest extent possible consistent with Owner's scheduling needs, Program Manager shall avoid setting bid or proposal dates for the Project which conflict with bid or proposal dates for other construction projects in the area, it being Owner's desire to have the maximum possible interest in bidding or proposing on its Project.
- 4.14.3 As necessary, or upon request by Owner, stimulate bidder or offeror interest by direct contact with qualified contractors and construction managers and design/builders. Such contact with bidders and offerors shall be, at all times, ethical and prudent, and shall not compromise the integrity of the Owner and/or the bidding process.
- 4.14.4 Monitor and expedite the bidding or proposal process by tracking recipients of bid or proposal documents, obtaining and facilitating answers to bidders' or offerors' questions and furnishing necessary information, and facilitating the issuance of addenda.
- 4.14.5 Assist the Project Architect in preparing addenda in consultation with the Owner, as necessary. Review all addenda for accuracy and completeness, compliance with Project criteria, constructability and impact on the construction schedule and cost, and report any significant cost or schedule impacts and any problems and areas of concern to Owner prior to issuance of addenda.
- 4.14.6 Analyze all bids or proposals received for completeness, responsiveness, price and compliance with bid bond requirements.
- 4.14.7 Investigate the background of all bidders or offerors, including such bidders' or offerors' experience in the local construction market, experience in construction, and if applicable, design, of educational facilities, qualifications to construct, and if applicable, design, the Project being bid or proposed, financial and bond capacity, and claims history.
- 4.14.8 In consultation with the Owner, evaluate bids or proposals and make recommendations regarding selection of the Contractor.
- 4.14.9 Ensure that all bid specifications shall include the required statement regarding workers' compensation, as set forth in Board Policy CV (Exhibit) and 28 Texas Administrative Code 110.110@.

4.15 Reducing Bid or Proposal Amounts.

- 4.15.1 In the case of competitive bidding, in the event that the lowest responsible bid for construction of a Project exceeds the construction portion of the Project budget, Owner may exercise its right to reject all bids, revise the construction documents, and rebid the project; and Program Manager shall not attempt to negotiate for a change in the scope of work and price.

In the case of competitive sealed proposals, Program Manager may, in consultation with the Owner, negotiate with the selected offeror to negotiate a contract and may discuss options for a scope or time modification and any price change associated with the modification. If such negotiations are unsatisfactory to the Owner, the Program Manager and Owner shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected. If such negotiations are unsuccessful in lowering the bid or proposal to an amount acceptable to Owner, Program Manager shall, in cooperation with the Project Architect if applicable, advise Owner on means of Value Engineering or lowering the cost of construction and, if applicable, design. Program Manager shall assist in implementing any measure decided upon by Owner to achieve such savings.

4.16 Program Manager shall make public the evaluations of bids and/or proposals after each contract is awarded, in accordance with Texas law.

4.17 Program Manager shall comply in all respects with all applicable laws and Board Policies relating to the procurement of construction services and goods, and professional services relating to construction, including Texas Education Code Chapter 44, Texas Government Code Chapters 2267-2269, and Owner's Board Policies CV (Legal) and (Local), CVA (Legal) and (Local), CVB (Legal) and (Local), CVC (Legal), CVD (Legal, CVE (Legal), and CVF (Legal). PROGRAM MANAGER SHALL HOLD HARMLESS, INDEMNIFY, AND DEFEND OWNER AGAINST ANY CLAIMS, CAUSES OF ACTION, PENALTIES, JUDGMENTS, AND VIOLATIONS RELATING TO AND/OR CAUSED BY PROGRAM MANAGER'S FAILURE TO COMPLY WITH ANY APPLICABLE LAWS, POLICIES, AND REGULATIONS RELATING TO THE PROCUREMENT OF CONSTRUCTION SERVICES, PROFESSIONAL SERVICES, AND GOODS IN CONNECTION WITH THIS AGREEMENT.

4.18 Notice To Proceed. Program Manager shall prepare and, after obtaining Owner's written approval, issue the notice to proceed to the Contractor.

4.19 Conduct Preconstruction Conference. Program Manager shall conduct a preconstruction conference with the Project Architect and the Contractor for the purpose of reviewing any special requirements related to site access, safety, coordination with school activities, communications and reporting procedures, scheduling, submittals, pay requests, change orders, inspections and any other matters relevant to the performance of the Program Manager, Project Architect, and Contractor.

4.20 Procurement Of Special Services. Program Manager shall, as Owner's agent, procure, coordinate and supervise the services of surveyors, testing laboratories, and other special consultants required for the Project. Program Manager shall monitor all test results and notify Owner and Project Architect in writing of any known or observed problems.

4.21 Perform Owner's Obligations Under Construction Contract. Unless otherwise directed by Owner, Program Manager shall coordinate with Owner to schedule, coordinate, assist with and facilitate the performance of all of Owner's duties under the Construction Contract. In addition, and without limiting the generality of the foregoing, and any provision hereof to the contrary notwithstanding, the Program Manager shall perform, as Basic Services, all of the duties of the "Owner's Representative." Program Manager shall coordinate with Owner to schedule and coordinate the procurement, delivery and security of any materials, furnishings and equipment to be furnished to the Project or any Project by Owner.

4.22 Permits And Licenses. Program Manager shall confirm that all permits and licenses that are required by contract or law are obtained. Program Manager shall not permit the Contractor to perform any Work requiring a permit or license unless the permit or license has been obtained.

4.23 Contractor's Bonds And Insurance Requirements. Program Manager shall review all insurance certificates and policies, payment bonds and performance bonds submitted by the Contractor for compliance with requirements of the Construction Contract, and Program Manager shall maintain on file copies of same. Program Manager shall verify to Owner in writing Contractor compliance with such requirements. Program Manager shall not permit any Contractor to commence or continue with performance of the Work or Construction Contract if such Contractor is not in compliance with all insurance and bond requirements, but shall immediately notify Owner in writing of such noncompliance.

4.24 Project Administration. Program Manager shall provide a management team to administer the Projects as an agent of Owner. Program Manager shall promptly notify Owner in writing of any known material breach of a Construction Contract by a Contractor and shall take all steps necessary to remedy such breach and to minimize or eliminate the effect of such breach on the timely and proper completion of the Work. Program Manager shall coordinate communication between all parties involved in construction of the Project. Program Manager shall monitor all construction activities and, through Owner's Representative and, where applicable, coordinate same with activities and functions and other needs of the Owner.

4.25 Contract Administration By Project Architect. Program Manager shall monitor the performance of Construction Contract administration duties by the Project Architect, including, without limitation, the timeliness of the Project Architect's review of submittals, change orders and Contractor pay requests. Owner may require Program Manager to perform, as an Additional Service unless set forth elsewhere in this Agreement as a Basic Service, all contract administration duties that would otherwise be performed by the Project Architect. Program Manager shall not draft or amend Contract Documents. Program Manager shall use contract forms and documents drafted and/or amended by Owner, in consultation with Owner's legal counsel.

4.26 Review of The Work. Without assuming the responsibility of the Project Architect for the accuracy, adequacy and completeness of design, and without assuming the responsibility of the Contractor, Program Manager shall review construction Work to determine the quality and quantity of the Work performed in comparison to the requirements of the Construction Contract, it being the intention of the parties and a requirement of the Construction Contract that all Work be performed in strict accordance with the requirements thereof. Within two (2) days after any such inspection, Program Manager shall report to Owner in writing any deficient or nonconforming Work and any facts and circumstances observed or discovered that are detrimental or potentially detrimental to the Project or Owner's interests.

4.27 Administration of Construction Contract. Without assuming the responsibility of the Project Architect for the accuracy, adequacy and completeness of design, and without assuming the responsibility of the Contractor, Program Manager shall perform additional Construction Contract administration duties, beyond those required as Basic Services, including, without limitation, regular reviews of the Work, review of submittals, evaluation of requests for change orders, review and certification of Contractor pay requests, certification of Substantial Completion and Final Completion, and such other contract administration duties as Owner may request.

4.28 Job Site Meetings. Program Manager shall schedule and conduct regular job- site meetings with the Project Architect, Contractor, and, as necessary, major subcontractors. Such meetings shall be scheduled and held with such frequency as may be appropriate for the Project but in no event less frequent than monthly. The purpose of such meetings shall be to address all matters and issues relating to quality, quantity and progress of the Work. Program Manager shall prepare and deliver to Owner and all in attendance at such meeting detailed minutes of same.

4.29 Review Of RFI's. Program Manager shall review all requests for information and interpretation submitted by Contractors within ten (10) days after receipt thereof, or more expeditiously as necessary to maintain compliance with Owner's contract(s) with Contractors. Where appropriate, Program Manager shall provide information to Contractors on behalf of Owner. With respect to any interpretation, rendered by the Project Architect, of a requirement of the Construction Contract, Program Manager shall carefully review such interpretation and shall immediately advise Owner in writing if Program Manager disagrees with any such interpretation. Program Manager shall maintain a log of all requests for information and interpretation, which shall record the date of receipt of, a description of, and date of response to, each request.

4.30 Review Of Contractor's Pay Requests. Program Manager shall review each Contractor pay request upon receipt from the Project Architect, and shall certify to Owner the amount that, in Program Manager's professional judgment, is due the Contractor. Program Manager shall notify Owner in writing of any disagreement with the Project Architect's certification and any reasons for such disagreement. Program Manager's certification of any Contractor pay request shall be a representation to Owner that the amount certified is currently owed to the Contractor under the terms of the Construction Contract and that Program Manager knows of no reason why any portion of such amount should be withheld.

4.31 Change Order Review. Program Manager shall review all change order requests or proposals submitted, and, within ten (10) days after receipt thereof, or more expeditiously if necessary to avoid delay to the construction schedule, shall, after consultation with the Project Architect, advise Owner in writing as to the cause, necessity, purpose, advantages and disadvantages, likely cost, likely effect on the construction schedule and the Project Schedule and all other impacts and problems that may result from the issuance or non-issuance of a change order. Program Manager shall advise Owner of any reasonable alternatives to the change order request or proposal, and shall recommend a course of action. Program Manager shall negotiate, on Owner's behalf, cost increases and decreases and time extensions resulting from each change order with the party requesting the change order. Program Manager shall maintain a log of all change order requests and proposals, the amounts of same, all actions taken thereon, and the dates thereof.

4.32 Testing And Startup. Program Manager shall observe the testing and startup of all utilities, systems and equipment and shall report the results of same to Owner in writing. Program Manager shall deliver to Owner all written material such as operations and maintenance manuals for all equipment, and all warranties and guaranties required by the Construction Contract.

4.33 As-Built Drawings. Program Manager shall review all as-built drawings and shall certify to Owner that all as-built drawings are adequate and complete based on the Program Manager's investigation, knowledge and belief.

4.34 Owner Training. Program Manager shall arrange for training of Owner's personnel in the maintenance and operation of all equipment and systems.

4.35 Punchlists And Defective Work. Program Manager shall assist Owner in the preparation and enforcement of all punchlists and other itemizations of defective or incomplete Work. Program Manager shall report to Owner on a weekly basis the Contractor's progress in curing and completing punchlist Work.

4.36 Certificates Of Completion. Program Manager shall review all certificates of Substantial Completion and Final Completion issued by the Project Architect. Program Manager shall immediately notify Owner in writing if Program Manager disagrees with any such certificate and shall state the reasons for such disagreement.

4.37 Warranty Administration. Program Manager shall issue and monitor warranty claims, and schedule one-year inspections with the Project Architect and contractors.

4.38 Claims Assistance. Program Manager shall review and evaluate any and all claims for additional compensation or time extensions submitted by the Contractor or the Project Architect. Program Manager shall consult with Owner with respect to the nature, basis and merits of such claims. If requested by Owner in writing, Program Manager shall negotiate such claims with the claimant on Owner's behalf.

ARTICLE 5

ADDITIONAL SERVICES

5.1 Generally. During the planning, design and construction of the Project, and at all times relevant thereto, Program Manager shall perform the services, duties, obligations and responsibilities set forth in, or reasonably implied by or inferable from, this Article 5, if authorized and directed by written Change Order executed by Owner pursuant to Article 8 herein. Program Manager agrees to and accepts this scope of Additional Services.

5.2 Changes In The Project. Program Manager shall perform such services as may reasonably be required due to significant changes made in the Project after execution of a Project Order for the Project.

5.3 Owner's Insurance. Program Manager shall, in cooperation with Owner's risk management representative, determine Owner's insurance needs for the Project and assist Owner as needed in procuring necessary coverage.

5.4 Submission Of Documents To Reviewing Agencies. Program Manager shall ensure that all required submissions of documents to reviewing agencies, both governmental and otherwise, are complete, timely and in compliance with the requirements of such agencies.

5.5 Negotiation Of Construction Contract. Program Manager shall assist Owner in negotiating the Construction Contract with the Contractor selected by Owner. Nothing herein shall be construed to indicate that the Program Manager shall be engaged in the practice of law, or the giving of legal advice. Program Manager shall not draft or amend Contract Documents. Program Manager shall use contract forms and documents drafted and/or amended by Owner, in consultation with Owner's legal counsel.

5.6 Review of The Work. Without assuming the responsibility of the Project Architect for the accuracy, adequacy and completeness of design, and without assuming the responsibility of the Contractor, Program Manager shall review construction Work to determine the quality and quantity of the Work performed in comparison to the requirements of the Construction Contract, it being the intention of the parties and a requirement of the Construction Contract that all Work be performed in strict accordance with the requirements thereof. Within two (2) days after any such inspection, Program Manager shall report to Owner in writing any deficient or nonconforming Work and any facts and circumstances observed or discovered that are detrimental or potentially detrimental to the Project or Owner's interests.

5.7 Administration of Construction Contract. Without assuming the responsibility of the Project Architect for the accuracy, adequacy and completeness of design, and without assuming the responsibility of the Contractor, Program Manager shall perform additional Construction Contract administration duties, beyond those required as Basic Services, including, without limitation, regular reviews of the Work, review of submittals, evaluation of requests for change orders, review and certification of Contractor pay requests, certification of Substantial Completion and Final Completion, and such other contract administration duties as Owner may request.

5.8 Owner Requested Services. Program Manager shall perform such other services related to the Project and the intent of this Agreement as Owner may reasonably request.

ARTICLE 6

OWNER'S OBLIGATIONS OTHER THAN PAYMENT

6.1 Provide Project Information. Owner shall provide Program Manager with adequate information regarding Owner's requirements for the Project, including any desired or required schedules and any budgetary requirements.

6.2 Owner's Representative. The Owner's Representative is Dr. Scott Muri, Superintendent, or his designee. Such individual shall serve as Owner's Representative for the duration of the Project unless replaced by Owner, with written notice of such replacement furnished to Program Manager. Owner's Board of Trustees and Owner's Representative are the only representatives of Owner entitled to act on behalf of Owner with respect to this Agreement and the requirements hereof. However, Owner's Representative does not have authority to waive or modify any requirement, condition or term of this Agreement.

6.3 Review Of Documents. Owner shall review any documents submitted by Program Manager requiring Owner's decision and shall render any required decisions pertaining thereto.

6.4 Access To The Site And The Work. Owner shall provide Program Manager access to the Project site and to the Work as necessary for Program Manager to perform this Agreement.

6.4.1 Criminal Background Checks. Program Manager affirms that it has complied or will comply prior to the performance of any work for/at the Owner, with the requirements regarding criminal background checks SB9 as provided under Texas Education Code, Chapter 22. This law requires the Program Manager to obtain all criminal history record information on all persons to whom the law applies. This process includes fingerprinting in order to submit the individuals to a national check.

Program Manager certifies to the Owner that it has received all criminal history record information on all persons servicing this agreement and none of the persons has a disqualifying criminal history. If Program Manager receives information that a person fulfilling this agreement subsequently has a reported disqualifying criminal history, Program Manager will immediately remove the person from duties with the Owner and notify the Owner in writing within 3 business days.

Program Manager will provide the Owner with the name and any other requested information of person(s) fulfilling this agreement so that the Owner may obtain criminal history record information on the person(s). If the Owner objects to the assignment of a person on the basis of the person's criminal history record information, Program Manager agrees to discontinue using that person(s) to provide services under this contract. Program Manager also certifies that it has obtained certifications from its subcontractors (if applicable) of compliance with Education Code, Chapter 22. Noncompliance or misrepresentation regarding this certification may be grounds for agreement termination.

6.5 Cooperation To Secure Permits. Owner shall cooperate with Program Manager in securing any necessary licenses, permits, certificates, approvals or other necessary authorizations for the construction and occupancy of the Project.

6.6 Timely Performance. Owner shall perform those obligations set forth in the Agreement in a reasonably expeditious fashion so as to permit the orderly progress of Program Manager's Services and the Project.

6.7 Owner's Reviews, Inspections, Approvals, And Payments. Owner's review, inspection, or approval of any Preliminary Design, Design for Construction, Construction Contract, any other design or construction documents, any Work, any schedules, or any documents prepared or submitted by Program Manager shall be solely for the purpose of determining whether same are generally consistent with the Project and Owner's requirements. No review, inspection, or approval by Owner of such Designs, Work or documents shall relieve Program Manager of its responsibility for the strict performance of its obligations under this Agreement or for the accuracy, adequacy, fitness, suitability, or coordination of its Services and work product. Payment by Owner pursuant to this Agreement shall not constitute a waiver of any of Owner's rights under this Agreement or at law.

6.8 Program Manager's Notice Of Nonperformance. If Program Manager believes that Owner is failing, or has failed, to perform properly and timely any of Owner's obligations hereunder, Program Manager shall promptly furnish written notice of same to Owner in accordance with Article 15.1.

ARTICLE 7

PAYMENTS TO PROGRAM MANAGER

7.1 Basis Of Compensation. Owner shall pay, and Program Manager shall accept, as full and complete compensation for Program Manager's assumption and performance of all of the Basic Services required herein, the sum of (a) the Program Manager's Fee, for the period of time and to the extent of the utilization of personnel set forth in a Project Order and (b) the Program Manager's Reimbursable Expenses as allowed by Exhibit "A", and reasonably incurred in furtherance of the Project.

7.2 Taxes And Fees. The Program Manager's compensation shall be deemed to include, and Program Manager shall be responsible for payment of, all federal, state and local taxes, assessments and fees related to this Agreement and the performance thereof which are enacted and effective as of the date of this Contract.

7.3 Program Manager's Invoice. On or before the fifth day of each month after Program Manager commences performance of its services pursuant to a Project Order, Program Manager shall submit to Owner an invoice for the Services performed by Program Manager through the last day of the preceding month. Payments are due and payable thirty (30) days from the Owner's receipt of the Program Manager's invoice. Amounts unpaid thirty (30) days after the date of Owner's receipt shall bear interest at the rate determined in accordance with the Texas Prompt Payment Act, Chapter 2251 *et seq.*, Texas Government Code. Invoices shall be in such form and with such supporting data as Owner may require. In its Invoice, Program Manager may request payment for that portion of the Program Manager's compensation earned and not previously paid through the pay period covered by the

Invoice. Copies of paid receipts for expenses for which Program Manager seeks payment shall be furnished as part of the Invoice if required by the Owner. Unless otherwise directed by Owner's Representative, Invoices shall be submitted to Owner's Representative for approval.

7.4 Certification Relating To Invoices. Each Invoice shall bear the signature of Program Manager's Project Coordinator, which signature shall constitute Program Manager's representation to Owner that the Services indicated in the Invoice have progressed to the level indicated and have been properly and timely performed as required herein, that the Reimbursable Expenses included in the Invoice have been actually, reasonably and properly incurred, that all obligations of Program Manager covered by prior Invoices have been paid in full, and that, to the best of Program Manager's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Program Manager that payment of any portion thereof should be withheld. Submission of Program Manager's Invoice for final payment shall further constitute Program Manager's representation to Owner that, upon receipt from Owner of the amount requested, all obligations of Program Manager to others incurred in connection with the Project, will be paid in full. In the event that Owner becomes credibly informed that any of the foregoing representations by Program Manager are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Program Manager until the inaccuracy, and the cause thereof, is corrected to Owner's reasonable satisfaction.

7.5 Payment Of Invoices. Owner shall make payment to Program Manager of all sums properly invoiced and approved under the provisions of this Article 7, less any withheld amount authorized by this Agreement and less any amounts owed by Program Manager to Owner, in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251, provided that the Invoice is in proper order, is supported by all required documentation, and that all conditions precedent to payment have been satisfied; otherwise, the time for payment of such Invoices shall be extended by the amount of time required to cure such deficiencies.

7.6 Withholding Of Payment. Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make a payment or payments to Program Manager otherwise due or thereafter to become due, to the extent that any one or more of the following conditions exists:

- (a) Program Manager's Invoice is not in the form or supported by the documentation required by this Agreement;
- (b) Program Manager is in default of any of its obligations hereunder or under the applicable Project Order;
- (c) Any part of such payment is attributable to performance by Program Manager which Owner adjudges to be deficient or not conforming with the requirements of this Agreement or the applicable Project Order; provided, however, that payment shall be made as to the part thereof attributable to performance which is rendered in accordance with this Agreement or the applicable Project Order and is not deficient, subject to other provisions hereof;
- (d) Program Manager has failed to make payments promptly to its Subcontractors, consultants, employees, or others performing Services in connection with the Project in accordance with any agreement therefore, or any person has filed a claim that Program Manager has failed to make payments due to such person;
- (e) Any person has asserted a claim against Owner in whole or in part on account of alleged acts or omissions of Program Manager; or
- (f) A bona fide dispute exists, as described in Texas Government Code § 2251.002.

In the event that any of the foregoing conditions exist, Owner shall be entitled to retain from any sum then due or thereafter to become due an amount sufficient in the judgment of Owner to satisfy, discharge, and defend against such claims, to make good any losses, prospective losses, costs, attorney's fees, and other expenses which may result from the existence of such conditions.

7.7 Disputed Invoice. In the event Owner's Representative disagrees with or questions all or any portion of any Invoice, the amount due to Program Manager, or the sufficiency of the information and documentation submitted by

Program Manager, Owner's Representative shall notify Program Manager in writing and Owner shall pay the undisputed parts of such Invoice, consistent with the Texas Prompt Payment Act.

7.8 Conditions Precedent To Payment. In addition to all other conditions contained in this Agreement, it shall be a condition precedent to any payment otherwise due hereunder that: (a) Program Manager not be in material breach of this Agreement or the applicable Project Order; (b) Program Manager have submitted all documents required by this Agreement or the applicable Project Order; and (c) Program Manager have submitted its Invoices and backup documentation in the time, form, and manner required by this Agreement.

ARTICLE 8

CHANGE ORDERS

8.1 Owner's Authority To Order Changes. Owner may, without affecting the validity or enforceability of this Agreement or the applicable Project Order, direct changes in the Services, including additions, deletions, modifications, and revisions thereto, and direct Program Manager to perform Additional Services. Program Manager shall promptly proceed with the performance of the Services in accordance with Owner's directions, and failure to agree on the specific terms of a Change Order shall not be cause for Program Manager's failure to perform the Services or to proceed with any directed change, so long as Owner and Program Manager agree that there has been a change to the Services.

8.1.1 Basis Of Compensation Increase. Any increase to Program Manager's compensation pursuant to a Change Order shall be made in accordance with the rates set forth in Exhibit "A".

8.2 Reductions In Program Manager's Compensation. If the Program Manager's Services are reduced in time or scope, the Program Manager's compensation shall be equitably adjusted by Change Order.

8.3 Payment. Payment for Services performed pursuant to a Change Order shall be requested and made in accordance with, and shall be subject to, the provisions of Article 7.

8.4 Change Orders Final. The parties' agreement on any Change Order shall constitute a final settlement on all items covered by such Change Order, as well as all issues and matters related in any way to the circumstances forming the basis for the Change Order.

ARTICLE 9

PERSONNEL, SUBCONTRACTORS AND CONSULTANTS

9.1 Approval Of Program Manager's Subcontractors Required/Required Subcontract Terms. Program Manager shall not subcontract to any person or entity (including affiliates of Program Manager) any part of the Services to be rendered by Program Manager under this Agreement without Owner's prior written approval. Program Manager shall provide Owner with such information as Owner deems necessary in order to determine whether to approve any such subcontracts. All such subcontracts shall afford Program Manager rights against its Subcontractors and consultants which correspond to the rights afforded to Owner against Program Manager herein, including, without limitation, those rights of contract suspension, termination, replacement of unsatisfactory personnel at Owner's request, and documentation of Subcontractor and consultant charges as set forth herein.

9.2 Program Manager Responsible For Acts Of Subcontractors. Should Program Manager subcontract all or any part of the Services required under this Agreement, such subcontracting of the Services shall not relieve Program Manager from any liability or obligation under this Agreement or under any Applicable Law, and Program Manager shall be responsible for any and all acts, defaults, omissions and negligence of its Subcontractors and consultants. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor or consultant of Program Manager, and a provision to this effect shall be inserted into all agreements between Program Manager and its Subcontractors and consultants.

9.3 Program Manager's Personnel. Program Manager shall assign only qualified personnel to perform the Services and any functions related to the Project.

9.3.1 Chief Executive. Upon forty-eight (48) hours' notice from Owner, Program Manager's Chief Executive Officer, or equal, shall be made available for consultation with Owner as Owner, in its sole discretion, deems necessary.

9.3.2 Prior Approval By Owner. Program Manager shall not assign any personnel to the Project without first obtaining written approval of such assignment from Owner's Representative. In order to permit Owner to evaluate Program Manager's prospective personnel assignments, Program Manager shall make all such personnel available for interviews by Owner and Owner's staff, at Owner's place of business, and shall furnish resumes of prospective personnel. At the time of execution of this Agreement, the individuals listed in Exhibit "A" have been approved by Owner. Subsequent personnel assignments shall be added to Exhibit "A", upon approval in accordance with this paragraph 9.3. Individuals listed in Exhibit "A", shall not be changed unless: (a) Owner exercises its rights set forth in paragraph 9.4, (b) Owner gives prior written authorization for such change, or (c) any such individual ceases to be employed or retained by Program Manager or any parent, affiliate, subsidiary, or joint venture partner thereof, in which case immediate written notice of same shall be given to Owner.

9.4 Removal Of Personnel And Subcontractors. If at any time during the course of the Project, Owner reasonably determines that the performance or conduct of any member of Program Manager's staff or any of Program Manager's Subcontractors or consultants working on the Project is unsatisfactory, Owner's Representative may require Program Manager to remove such staff member or terminate such Subcontractor or consultant from the Project immediately and replace the staff member or Subcontractor or consultant, subject to approval in accordance with paragraph 9.3, at no cost or penalty to Owner for delays or inefficiencies the change may cause.

9.5 Employment Taxes. Program Manager shall be responsible for payment of all unemployment compensation, social security, and other similar taxes and benefits covering its employees.

9.6 State of Texas Legislative Senate Bill No.1, Section 44.034, Notification of Criminal History, Subsection (a), states: "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The District must compensate the person or business entity for services performed before the termination of the contract".

This Notice Is Not Required of a Publicly Held Corporation.,

Check the appropriate box and sign in the space provided below.

- My firm is a Publicly Held Corporation; therefore, this reporting requirement is not applicable.
- My firm is not owned or operated by anyone who has been convicted of a felony.
- My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon: _____

Brief Details of Conviction(s); _____

ARTICLE 10

PROJECT DOCUMENTS

10.1 Use And Ownership. All Preliminary Designs, Designs for Construction, schedules and schedule updates, Construction Contracts, including, but not limited to, drawings, plans, specifications, and other documents or things pertaining to the Project are the sole property of Owner. Such drawings, specifications and other documents and things shall not be used by Program Manager for any purpose other than the design and construction of the Project unless Owner shall first agree otherwise in writing. PROGRAM MANAGER SHALL INDEMNIFY AND SAVE OWNER HARMLESS FROM ANY AND ALL LIABILITIES, COSTS, CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF, OR RESULTING FROM, ANY UNAUTHORIZED USE OF SAID DOCUMENTS AND THINGS BY PROGRAM MANAGER. THIS DUTY OF INDEMNIFICATION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10.2 Availability Of Project Records To Owner. All records, documents and things relating to the Project which are in the possession of Program Manager, including without limitation Program Manager's books and records relating to the Project, shall be made available to Owner, its designee, and any governmental authority for auditing, inspection and copying upon written request made by Owner. Such records also include, without limitation, all drawings, plans, specifications, Construction Contracts, Submittals, correspondence, minutes and notes of meetings, memoranda, audio or video tape recordings, computer-based files and storage instruments, and other writings or things which document the Project, its design, and its construction for a period of sixty (60) calendar days after Substantial Completion of each project.

10.3 Maintenance Of Project Records. Program Manager shall maintain and protect all Project-related documents, records and things for not less than twelve (12) years after Final Completion of the Project. Program Manager shall give Owner thirty (30) days written notice prior to disposal or destruction of any such documents, records and things.

ARTICLE 11

INDEMNITY

11.1 PROGRAM MANAGER SHALL INDEMNIFY AND HOLD HARMLESS OWNER FROM AND AGAINST ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY NATURE OR KIND, INCLUDING ATTORNEYS' FEES AND ALL LITIGATION-RELATED EXPENSES, SUSTAINED OR INCURRED BY OWNER TO THE EXTENT ARISING OUT OF AND ATTRIBUTABLE TO THE NEGLIGENCE OR WRONGFUL SERVICES, OR BREACH OF THIS AGREEMENT BY PROGRAM MANAGER, OR NEGLIGENT ACTS AND OMISSIONS OF PROGRAM MANAGER, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, AND CONSULTANTS. THIS DUTY TO INDEMNIFY OWNER SHALL EXTEND TO, BUT NOT BE LIMITED TO, CLAIMS FOR BODILY INJURY (INCLUDING DEATH), FOR DAMAGE TO OR LOSS OF PROPERTY, AND FOR ENVIRONMENTAL DAMAGE AND LIABILITIES, INCURRED OR SUSTAINED BY OWNER OR ANY THIRD PERSON TO THE EXTENT RESULTING FROM AND ATTRIBUTABLE TO ANY BREACH OF CONTRACT, NEGLIGENT OR WRONGFUL ACTS OR OMISSIONS OF PROGRAM MANAGER, ITS EMPLOYEES, SUBCONTRACTORS, AGENTS, AND CONSULTANTS. THIS DUTY OF INDEMNIFICATION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 12

INSURANCE

12.1 Coverage Required. Program Manager shall, throughout the duration of this Agreement, and for a period of one (1) year after final completion of each Project, maintain insurance coverage in the coverages and amounts set forth below, to protect Program Manager and Owner from claims arising out of Program Manager's services under this Agreement, written by insurers acceptable to Owner, and in a form acceptable for Owner. Owner shall have the right to require increased amounts of coverage if the scope of the work or potential liability substantially changes at any point during the course of Architect's provision of services and/or based upon changes in statutory laws, court decisions, or potential increase in exposure to loss. Such insurance shall be written on an occurrence

basis, if available, and on a claims-made basis, if occurrence basis insurance is not available. Program Manager shall be responsible for all deductibles. Insurance shall be obtained from companies licensed to do business in the State of Texas by the Texas Department of Insurance, having at least an "A" rating by A.M. Best.

12.1.1 **Workers' Compensation** to statutory limits.

12.1.2 **Employers Liability** - One Million dollars (\$1,000,000) per occurrence.

12.1.3 **Comprehensive General Liability**, with combined limit for bodily injury, sickness or disease, death, and property damage of not less than One Million dollars (\$1,000,000) per occurrence.

12.1.4 **Automobile Liability** covering all owned, non-owned or hired vehicles, with combined single limit of One Million dollars (\$1,000,000) per occurrence.

12.1.5 **Excess/Umbrella Liability** in excess of items 12.1.2, 12.1.3, and 12.1.4, above, in the amount of Five Million dollars (\$5,000,000) per occurrence.

12.1.6 **Professional Errors and Omissions** insurance, Five Million dollars (\$5,000,000) per occurrence with an aggregate limit of Seven Million dollars (\$7,000,000.00).

12.2 Owner As Additional Insured. Owner shall be included as an additional insured on the coverages for comprehensive general liability, automobile liability, and excess/umbrella liability, and shall be indicated as such on certificates of insurance required herein. The policies for general liability, automobile liability, and workers' compensation shall include a waiver of subrogation in favor of the Owner.

12.3 Certificates Of Insurance/Cancellation Notice. Not later than ten (10) days after execution of this Agreement, Program Manager shall furnish to Owner original signed certificates of insurance showing that the insurance required by this Article 12 is in force. Such certificates shall provide for thirty (30) days written notice to Owner prior to cancellation or material change in any insurance coverage or policy.

12.4 Subcontractor/Consultant Coverage. Unless expressly waived by Owner in writing, Program Manager shall permit no Subcontractor or consultant retained by Program Manager to enter upon any Project site or perform any Services unless such Subcontractor or consultant is and remains insured in accordance with the requirements of paragraphs 12.1, 12.2 and 12.3. PROGRAM MANAGER SHALL HOLD HARMLESS, INDEMNIFY, AND DEFEND OWNER FOR ANY LOSS OR DAMAGE SUFFERED BY OWNER AS A RESULT OF THE FAILURE OF ANY OF PROGRAM MANAGER'S SUBCONTRACTORS OR CONSULTANTS TO BE SO INSURED. THIS DUTY OF INDEMNIFICATION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 13

SUSPENSION

13.1 Owner's Right To Suspend. Owner may for any reason whatsoever suspend, in whole or in part, the Project, performance of any Work, and performance of Program Manager's Services under this Agreement or an applicable Project Order. Owner shall give written notice of such suspension to Program Manager specifying when such suspension is to become effective and the scope thereof.

13.2 Ceasing Performance Upon Suspension. From and upon the effective date of any suspension ordered by Owner, Program Manager shall incur no further expense or obligations in connection with the suspended portion of the Project or the Services, and Program Manager shall cease performing Services under the applicable Project Order as directed by Owner. Program Manager shall also promptly suspend any of its open or outstanding contracts, subcontracts, or purchase orders related to the suspended portion of the Project or the Services.

13.3 Resumption Of Work After Suspension. If Owner lifts the suspension it shall do so in writing, and Program Manager shall resume performance of the Services required by this Agreement and an applicable Project Order

unless, prior to receiving the notice to resume the Services, Program Manager has exercised its right of termination as provided in Paragraph 14.8 herein.

13.4 Claim For Costs Of Suspension. Within forty-five (45) days after either the resumption of the suspended portion of the Project or Services or termination by Program Manager pursuant to paragraph 14.8, Program Manager shall submit an itemization of expense and time reasonably and necessarily expended as a result of the suspension, together with costs, pricing or other data required by Owner. Program Manager's failure to provide such itemized information within such forty-five (45) day time period shall constitute a waiver of any claim to compensation relating to the suspension of Program Manager's work under this Agreement and an applicable Project Order. Owner shall promptly review Program Manager's itemization and shall issue a Change Order providing for payment to Program Manager of such amounts as may be reasonably and necessarily due on account of the suspension, which amounts shall be limited to actual and direct costs resulting from the suspension, and shall not include lost profits or other consequential damages related to or resulting from the suspension.

ARTICLE 14

TERMINATION

14.1 Termination For Convenience. Owner may for any reason whatsoever terminate, in whole or in part, one or more Projects, this Agreement, or Program Manager's employment under this Agreement, for Owner's convenience. Owner shall give written notice of such termination to Program Manager specifying when termination becomes effective and the scope of the termination.

14.2 Ceasing Performance Upon Termination. Program Manager shall incur no further obligations in connection with the terminated portion of a Project or this Agreement and Program Manager shall cease performance of Services when and to the extent such termination becomes effective. In the event of termination under this paragraph, Program Manager shall promptly terminate outstanding contracts, subcontracts, and purchase orders related to the terminated portion of a Project, Program Manager's employment or this Agreement unless directed to do otherwise by Owner. Owner may direct Program Manager to assign Program Manager's right, title and interest under open or terminated contracts, purchase orders, or subcontracts to Owner or its designee. Unless directed otherwise by Owner, Program Manager shall settle the liabilities and claims arising out of the termination of the contracts, subcontracts, and purchase orders. Under no circumstances shall Program Manager permit the recovery of any damages under its contracts with Contractors, Subcontractors, or other vendors by reason of termination under paragraph 14.1. Only actual and direct costs incurred as a result of termination shall be permitted

14.3 Submission Of Termination Claim. In the event of termination for convenience, Program Manager shall, within ninety (90) days of such termination, submit a written termination claim to Owner specifying the amounts due because of the termination together with cost, pricing, and other supporting documentation or data required by Owner. Program Manager's failure to file a termination claim within such ninety (90) day period shall constitute a waiver of any claim to compensation relating to the termination. If a proper termination claim is submitted, then Owner shall pay Program Manager an amount derived in accordance with paragraph 14.4 herein.

14.4 Compensation For Termination For Convenience. As full compensation to Program Manager for any termination for convenience, Owner shall pay Program Manager the following amounts:

- (a) The value, based upon the provisions of Article 7 hereinabove, of Services performed and accepted under this Agreement up to the termination effective date;
- (b) Reasonable and necessary costs as supported by documentation submitted to Owner (i) incurred prior to termination in preparing to perform and in performing the terminated portion of this Agreement, and (ii) incurred in terminating Program Manager's performance; and
- (c) Reasonable and necessary costs as supported by documentation submitted to Owner of settling and paying claims arising out of the termination of contracts, subcontracts, and purchase orders pursuant to this Article 14.

The total sum to be paid under this paragraph 14.4, as properly adjusted and as reduced by the amount of payments otherwise made, shall in no event include duplication of payment. Notwithstanding anything to the contrary in this Agreement, any and all claims made by Program Manager pursuant to this Article 14 shall be supported by adequate documentation

14.5 Termination For Cause. If Program Manager refuses or fails to perform its Services and responsibilities under this Agreement in a timely manner, supply enough properly skilled personnel, make prompt payment to its Subcontractors or consultants, or comply with Applicable Laws, or if Program Manager is otherwise guilty of a material breach of this Agreement or any representations or warranty made herein, then Owner may, by written notice to Program Manager, and without prejudice to any other right or remedy, terminate the employment of Program Manager and take possession of all design documents, Construction Contracts, and all other Project-related documents and things in the possession of Program Manager, and finish the Project by whatever methods it deems expedient. Should this Agreement be terminated in accordance with this paragraph 14.5, the compensation due to the Program Manager shall be limited to compensation for services performed and Reimbursable Expenses incurred prior to notice of such termination.

14.6 Erroneous Termination For Cause. In the event the employment of Program Manager is terminated by Owner for cause and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was, for any reason, without just or proper cause, then such termination shall thereupon be deemed a Termination for Convenience under paragraph 14.1 and the provisions of paragraph 14.4 regarding compensation shall apply.

14.7 Completion By Owner And Survival Of Obligations. Following any termination, whether for convenience or for cause and whether in whole or in part, Owner may complete the Project and the Services by whatever means Owner deems most expedient. Program Manager's obligations and all provisions of this Agreement and the applicable Project Order shall continue in full force and effect as to all Services performed prior to the effective date of the termination and as to that portion of the Project and Services not affected by the termination.

14.8 Termination By Program Manager. If one or more Project Orders are suspended for a period of more than sixty (60) consecutive days by governmental authority or by direction or neglect of Owner's Representative, and through no fault of Program Manager, or if Owner fails to pay Program Manager any undisputed amount due on any undisputed invoice within thirty (30) days after receipt of written notification from Program Manager that such payment is overdue, then Program Manager may, upon seven (7) days prior written notice to Owner, terminate its Services on the related Project.

ARTICLE 15

MISCELLANEOUS PROVISIONS

15.1 Notices. Any notice required to be given herein shall be deemed to have been given to the other party if (a) given by first class mail, registered air express mail, courier service, or hand delivery; or (b) by electronic mail, provided that such notice is also confirmed by first class mail, registered air express mail, courier service, or hand delivery, to the following addresses:

To Owner:

Dr. Scott Muri, Superintendent
Ector County ISD
802 N. Sam Houston Avenue
Odessa, TX 79761

To Program Manager:

Jeff Fisher, President
Gallagher Construction Company, LP
3501 Token Dr., Suite 100
Richardson, TX 75082

All notices shall be effective upon receipt.

15.2 No Third Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with, or any rights in favor of, any third party, including, without limitation, any Project Architect, Contractor, supplier, subcontractor or consultant.

15.3 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or other competent tribunal or rendered invalid by any legislative or regulatory enactment, the remaining provisions of this Agreement shall remain in full force and effect, and such holding or enactment shall not invalidate or render unenforceable any other provision hereof.

15.4 Headings. The headings used in this Agreement are merely for convenience and have no other force or effect.

15.5 Exhibits. All exhibits annexed hereto are incorporated by reference and made a part of this Agreement.

15.6 Governing Law. This Agreement shall be governed by the laws of the State of Texas, without regard to principles of conflict of law.

15.7 Entire Agreement/Amendments In Writing. This Agreement represents the entire agreement between Owner and Program Manager and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Program Manager.

15.8 Hazardous Materials. Program Manager and its consultants will have no responsibility for the discovery, presence, handling, removal or exposure of persons to hazardous materials in any form at any project site.

15.9 Delays Beyond Reasonable Control. Neither Owner nor Program Manager will be responsible for any delays beyond its reasonable control.

15.10 Dispute Resolution. Owner and Program Manager shall endeavor to resolve claims, disputes or other matters in question between them by way of mediation through a neutral third party as a condition precedent to litigation, except where injunctive relief is sought. If the parties do not resolve a dispute through mediation, the method of binding resolution shall be litigation in a court of competent jurisdiction. Venue for any lawsuit shall be in the county where the Project is performed or located.

OWNER:
ECTOR COUNTY ISD

PROGRAM MANAGER:
GALLAGHER CONSTRUCTION COMPANY, LP

By: _____
[Signature]

By: _____
[Signature]

Dr. Scott Muri

Jeff Fisher

Superintendent

President

[Date of Execution]

[Date of Execution]

**SCHEDULE OF
EXHIBITS
TO MASTER AGREEMENT FOR PROGRAM MANAGEMENT
SERVICES**

EXHIBIT "A"	Schedule of Compensation
EXHIBIT "B"	Partial Waiver and Release of Claim Rights
EXHIBIT "C"	Final Waiver and Release of Claim Rights

EXHIBIT "A"

SCHEDULE OF COMPENSATION

The Program Manager shall be compensated by the Owner, as follows:

Project Budget	% of Project Budget
Under \$500,000	10.0%
\$500,000 to \$5,000,000	6.0%
\$5m to \$15m	4.5%
\$15m to \$30m	3.8%
\$30m to \$50m	3.0%
\$50m to \$100m	2.8%
Over \$100m	2.5%

for the Program Management Services, as described within this contract, for any projects associated with the 2023 Bond Program or any other additional projects as assigned by the District.

Once the Board has approved the project for construction to begin the fee will be fixed, based on the percentages above, at that time.

This sum is based on the following provisions:

1. The Program Manager will attempt in every way to ensure these projects are completed on or ahead of schedule. If the projects are completed ahead of schedule the fee shall remain the same.
2. This fee includes the following items:
 - a. Personnel costs, only to the extent such costs are attributed to direct and actual work on the Project
 - b. Home office support costs, only to the extent such costs are attributed to direct and actual work on the Project
 - c. Communication devices and computers, only to the extent such costs are attributed to direct and actual work on the Project
 - d. Onsite Daily office supplies, paper, etc., only to the extent such costs are attributed to direct and actual work on the Project,
 - e. Mailing and courier costs
3. Payment Schedule: The payment schedule, for each project, shall be paid as follows:
 - a. Preconstruction/Design Phase: 40% of the fee billed equally/monthly once the approximate preconstruction schedule is determined.
 - b. Construction Phase: 60% of the fee billed equally/monthly once the approximate construction schedule is determined. Upon approval for construction by the Board of Trustees, the Construction Phase Fee will be adjusted to the actual fixed fee and divided in equal monthly payments for the duration of the project. If this duration is inordinately longer than normal due to coordination requirements or non-schedule compliance by contracted entities of the District, the fees may have to be increased accordingly. If more than one payment remains after reaching Substantial Completion of any Project, the Owner shall make all remaining payments for that Project in one payment.

- c. Payments are due and payable thirty (30) days from the date of the Owner's receipt of the Program Manager's invoice. Amounts unpaid thirty (30) days after the date of Owner's receipt shall bear interest at the rate determined in accordance with the Texas Prompt Payment Act, Chapter 2251 *et seq.*, Texas Government Code.
4. The Project Manager will be in the District periodically throughout the Preconstruction and Construction phase.
5. Deliverables: Program Manager will provide the following deliverables to the District throughout the duration of the project:
 - a. Construction Manager/General Contractor Selection Evaluations
 - b. Monthly Application for Payment Reviews
 - d. Significant Change Order Estimates
 - e. Quarterly Overall Bond Program Master Schedule Updates

Program Manager Personnel

The Program Manager proposes the following personnel to be assigned to the various ECISD projects:

Project Leader	Oscar Saenz
Project Manager	Todd Cason
Construction Observer	Rene Sepulveda
Quality Control	Randy Wolf
Project Coordinator	Kristen Howard

Personnel assigned to ECISD projects shall not be changed without the written consent of the Owner. Additional personnel resources may be added by the Program Manager, depending on the quantity, complexity and/or schedule of the projects assigned, pending approval of the Owner.

Reimbursable Expenses

The Program Manager shall be reimbursed at cost and without mark-up for reasonable out-of-town travel expenses if requested in advance by the Owner. The actual cost of printing, for drawings, specifications, and bid packages shall be paid by the Owner.

Owner reserves the right to refuse reimbursement for expenses that are not reasonable or necessary for the Work or which are, in Owner's sole discretion, above reasonable and/or market rates.

Owner agrees to reimburse the Program Manager the lump sum of Twenty Thousand Dollars (\$20,000) for increased Professional Errors & Omissions policy limits of Five Million dollars (\$5,000,000) per occurrence with an aggregate limit of Seven Million dollars (\$7,000,000.00) payable upon contract execution.

Changes in the Work

For the purposes of any additions to the scope of the Work as outlined in paragraph 8.1.1, the following hourly rates will apply:

- a. Principal/Project Leader: \$200/hour
 - b. Project Manager/Construction Manager: \$150/hour
 - c. Project Accountant: \$125/hour
 - d. Quality Control: \$120/hour
 - e. Construction Observer: \$120/hour
 - f. Assistant Project Manager: \$80/hour
 - g. Project Coordinator: \$80/hour
-

EXHIBIT "B"

NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project Job No.

The signer of this document has been paid and has received a progress payment in the sum of \$_____ for all labor, services, equipment, or materials furnished to the property or to (person with whom signer contracted) on the property of (owner) located at (location) to the following extent: (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

(Company Name)

By: _____

Name: _____

Title: _____

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned, a Notary Public on this day of _____, 20____ to certify which witness by hand and seal of office.

Notary Public, State of Texas My Commission Expires:

EXHIBIT "C"

FINAL WAIVER AND RELEASE OF CLAIM RIGHTS

NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project Job No.

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to (person with whom signer contracted) on the property of (owner) located at (location) to the following extent: (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

(Company Name)

By: _____

Name: _____

Title: _____

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned, a Notary Public on this day of _____, 20____ to certify which witness by hand and seal of office.

Notary Public, State of Texas
My Commission Expires: _____
