

OWNER'S INDEPENDENT DESIGN PROFESSIONAL AGREEMENT

This OWNER'S THIRD-PARTY REPRESENTATIVE AGREEMENT ("Agreement") is entered into on the date of the last signature below (the "Effective Date") by and between CALALLEN INDEPENDENT SCHOOL DISTRICT, a political subdivision and public school district of the State of Texas with offices located at 4205 Wildcat Drive, Corpus Christi 78410, ("Owner"), and CEI Engineering Associates, Inc., a corporation of the State of Arkansas, with mailing address of P.O. Box 140, Bentonville, AR 72712-1408 and offices located at 3030 LBJ Freeway, 9th FL Suite 920, Dallas, TX 75234 ("Independent Design Professional").

BACKGROUND

- A. The Board has delegated authority to Superintendent to select the construct delivery method and the Superintendent has selected the Design-Build Construction Method for its Baseball & Softball Fields Synthetic Turf Conversion Improvements Project (the "Project"). In accordance with Texas Government Code 2269.305 the Owner has selected the undersigned based on its competence and qualifications to act as the Owner's Independent Design Professional at all stages of the Design-Build.
- B. The Independent Design Professional was also selected based on its special expertise and experience in design consultation, scheduling, budget development and oversight, scope development, cost control, quality control, construction phasing and logistics; administration of design-build projects and general contractor led construction projects; closeout of construction projects and oversight of warranty work.
- C. The Owner desires to retain the Independent Design Professional to provide comprehensive services in the organization, coordination, management and administration required for all aspects of the Project, as more particularly described in the Scope of Work attached hereto as **Exhibit A**.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the Owner and the Independent Design Professional agree as follows:

AGREEMENT

1. Term of Agreement.

This Agreement is effective on the Effective Date and shall remain in effect until all obligations set forth in this Agreement have been satisfactorily fulfilled (the "Term"). Independent Design Professional shall have a continuing obligation, after the Term, to comply with any provision of this Agreement intended for Owner's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Agreement. **INDEPENDENT DESIGN PROFESSIONAL UNDERSTANDS THAT NO WORK SHOULD BEGIN UNDER THIS AGREEMENT UNTIL ALL REQUIRED SIGNATURES ON THIS AGREEMENT HAVE BEEN OBTAINED. ANY WORK PERFORMED BY INDEPENDENT DESIGN PROFESSIONAL PRIOR TO SUCH TIME SHALL BE CONSIDERED AS HAVING BEEN PERFORMED AT INDEPENDENT DESIGN PROFESSIONAL'S OWN RISK AND AS A VOLUNTEER.**

2. Scope of Services.

2.1. Owner retains the Independent Design Professional to provide sufficient organization, personnel and management to perform the services specified in **Exhibit A** of this Agreement (the "Scope of Services") in an expeditious and economical manner. The Independent Design Professional shall perform its services with the professional skill and care ordinarily provided Engineers or engineers, as applicable, practicing under the same or similar circumstances and with the same professional license. The Independent Design Professional shall act in accordance with its standard of care to further the Owner's interests and to act solely in the Owner's interest in

performing all its services including providing independent consultation, explanation, evaluation and feedback to the Board regarding construction industry trends, impact of outside forces on local pricing, products specified in the design, budget and GMP Proposal by the Design Builder; accuracy, completeness of payment applications and compliance with the Contract Documents while working in full cooperation with the Design-Builder's Engineers Contracting Team.

2.2. Independent Design Professional shall provide a project team at all times that shall have sufficient capacity, skill and experience to perform the Work ("Independent Design Professional's Team"). Independent Design Professional may not, without the written consent of Owner, reassign or replace any member of the Independent Design Professional's Team. If a member of Independent Design Professional's Team resigns, any replacement shall be subject to Owner's approval. The initial Independent Design Professional's Team identified in **Exhibit B**, is approved by Owner.

2.3. Independent Design Professional shall perform the Work in compliance with all applicable federal, state and local laws, regulations, and codes, including without limitation the Owner's policies, procedures and Owner's other applicable standards as provided by Owner ("Laws"). Independent Design Professional shall maintain and shall require that its subcontractors and subconsultants, if any, maintain any and all required governmental licenses, certificates, approvals, and permits that are required of the Independent Design Professional for the performance of the Work. The Independent Design Professional agrees to maintain in full force and effect such required licenses, certificates, approvals, and permits throughout the Term.

2.4. Owner may modify the Scope of Services without invalidating this Agreement. To avoid delay in the Project, upon receipt of an Owner-requested change in the Scope of Services, the Independent Design Professional shall promptly proceed with the change in Scope of Services. If the Independent Design Professional believes it is entitled to additional compensation for the change in Work, the Owner's Representative shall promptly notify the Owner in writing. Any change in Independent Design Professional's compensation shall be made by a written agreement signed by both Parties.

3. Owner's Responsibilities.

3.1. The Owner shall provide information regarding its design and construction requirements for the Project to the Independent Design Professional, with reasonable promptness.

3.2. The Owner shall designate an individual who shall have the authority to render decisions on Owner's behalf ("Owner's Contact"). The Owner may change Owner's Contact from time to time by written notice to the Independent Design Professional. The initial Owner's Contact shall be:

Ms. Emily Lorenz
Calallen Independent School District
4205 Wildcat Drive
Corpus Christi, Texas 78410

4. Compensation and Terms of Payment.

4.1. The consideration for all Work performed or supplied by Independent Design Professional under this Agreement shall be paid by Owner as set forth in **Exhibit C**.

4.2. **Subcontractor's Payment.** If Owner's Representative engages any subcontractors or subconsultants to perform any of the Scope of Services, Independent Design Professional shall not markup work performed by its subcontractors. Independent Design Professional shall pay any such subcontractor or subconsultant within ten days (or such shorter period as required by law) of the Independent Design Professional's receipt of payment from the Owner for undisputed services provided by the subcontractor or subconsultant. Independent Design Professional shall pay interest of at the rate provided in the Texas Prompt Payment Act, Local Government Code Chapter 2251, to the subcontractor or subconsultant on undisputed amounts not paid on time to the subcontractor or subconsultant.

4.3. **Reimbursable Expenses.** [Intentionally deleted. The fee set out below includes all reimbursable expenses. See Exhibit C for compensation for any additional services.]

4.4. **Frequency of Invoicing and Terms of Payment.**

4.4.1 Independent Design Professional shall submit invoices monthly, describing in reasonable detail the services (and goods, if any) provided in the preceding month including time spent on various tasks. Services (and goods, if any) shall be separately billed by Project. Payment of undisputed amounts due shall be made by Owner not later than 31 days after Owner's receipt of an invoice and acceptance of services rendered under this Agreement.

4.4.2 Notwithstanding anything to the contrary in this Agreement, the Owner may withhold payment to the Independent Design Professional hereunder if and for so long as the Owner finds any of the Independent Design Professional's services to be defective, untimely, unsatisfactory or Independent Design Professional otherwise fails to perform any of its obligations or otherwise is in default; provided, however, that any such holdback shall be limited to an amount sufficient in Owner's reasonable opinion to cure any such default or failure of performance by Independent Design Professional.

5. **General Terms and Conditions.**

5.1. **Termination, Suspension.**

5.1.1. Termination for Convenience by Owner. Owner may terminate this Agreement in whole or in part upon written notice to Independent Design Professional for Owner's convenience. In the event of a termination for Owner's convenience, Independent Design Professional shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by Owner in its sole discretion, for services satisfactorily performed prior to the date of notice of termination, together with properly documented reimbursable expenses then due. In no event shall Independent Design Professional be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers, subcontractors and/or subconsultants, which could have been avoided. Owner will not pay the Independent Design Professional for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. Upon receipt of notice of termination, unless the notice directs otherwise, the Independent Design Professional shall do the following: discontinue all Work, cause its subcontractors and/or subconsultants to cease their work in connection with this Agreement, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement; and furnish the Owner with copies of all Project materials within seven (7) days of receipt of notice of termination.

5.1.2. **Termination for Cause.**

5.1.2.1 Either party may terminate this Agreement upon not less than thirty (30) days' written notice to the other party should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination; provided, however, if in the reasonable determination of the non-defaulting party the event(s) giving rise to the termination is/are reasonably susceptible to cure, the termination shall not be effective if the defaulting party cures the basis of the termination within the thirty (30) day period to the non-defaulting party's reasonable satisfaction. When the Owner terminates this Agreement for cause, Independent Design Professional shall not be entitled to receive further payment until the Work is finished. Independent Design Professional shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by Owner in its sole discretion, for work or services satisfactorily performed minus all damages incurred by Owner connected with Independent Design Professional's failure to perform. In no event shall Independent Design Professional be paid for unperformed Services, unsatisfactorily performed Services or costs incurred after receipt of notice of termination, or for costs incurred by subcontractors which could have been avoided.

5.1.2.2 Owner will not pay the Owner's Representative for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. Upon receipt of

notice of termination, unless the notice directs otherwise, the Independent Design Professional shall do the following: discontinue all Work, cause its subcontractors and/or subconsultants to cease their work in connection with this Agreement, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement; and furnish the Owner with copies of all Project materials within seven (7) days of receipt of notice of termination.

5.1.3. **Suspension by Owner.** Owner may, without cause, order the Independent Design Professional in writing to suspend its services in whole or in part for such period of time as the Owner may determine. If the Owner suspends the Project, without cause, for more than sixty (60) consecutive days, the Independent Design Professional shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Independent Design Professional shall be compensated for reasonable expenses incurred as a direct result of the interruption and resumption of the Independent Design Professional's services. If appropriate, the Independent Design Professional's fees for the remaining services and the time schedules shall be equitably adjusted. If the Owner suspends the Project for more than ninety (90) consecutive days for reasons other than the fault of the Independent Design Professional, the Independent Design Professional may terminate this Agreement by giving not less than thirty (30) days' written notice.

5.1.4. **Suspension by Independent Design Professional.** If the Owner fails to make payments to Independent Design Professional in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Independent Design Professional's option, cause for suspension of performance of services under this Agreement. If the Independent Design Professional elects to suspend services, Independent Design Professional shall give thirty (30) days' written notice to the Owner due to the Owner's failure to make payment before suspending services. If Independent Design Professional suspends services, Independent Design Professional shall have no liability to Owner to the extent of any delay or damage caused the Owner because of such suspension of services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by Independent Design Professional was otherwise not warranted. Before resuming services, Independent Design Professional shall be paid all sums due prior to suspension and any properly documented reasonable expenses incurred as a direct result of the interruption and resumption of the Independent Design Professional's services (if such suspension was warranted) and if appropriate, the Independent Design Professional's compensation for the remaining services shall be equitably adjusted.

5.2. **Disputes.**

5.2.1. Owner and Independent Design Professional shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the time period specified by applicable law.

5.2.2. Owner and Independent Design Professional shall endeavor to resolve claims, disputes and other matters in question ("Dispute") between them by negotiation in good faith.

5.2.3. If negotiation fails to resolve a Dispute within thirty (30) days after receipt of notice of the Dispute, then the parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator qualified as an impartial third party for purposes of Section 154.052 of the Texas Civil Practice & Remedies Code.

5.2.4. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

5.2.5. In the event the Owner and the Independent Design Professional are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

5.2.6. Nothing herein shall preclude the Owner or the Independent Design Professional from requesting that the Design-Builder’s Engineer or the Design-Builder or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts

5.2.7. The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in county where the Owner’s administrative offices are located. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5.2.8. If the parties do not resolve a Dispute through mediation pursuant to this Section, the method of binding dispute resolution shall be litigation.

5.2.9. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Independent Design Professional, in whole or in part.

5.3. **Choice of Law, Forum Selection, Entire Agreement, and Amendment.** This Agreement shall be construed under Texas law (without regard for choice of law considerations) and the policies and procedures of Owner, as amended from time to time. Any action arising out of this Agreement shall be heard by a state court or Federal District Court with jurisdiction over the county where the Owner’s administrative offices are located. For this purpose, Independent Design Professional specifically consents to jurisdiction in the county where the Owner’s administrative offices are located. This Agreement constitutes the entire agreement and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Owner shall not be bound by any amendment to this Agreement unless such amendment has been signed by Owner.

5.4. **Independent Design Professional’s Insurance.**

5.4.1 Prior to performing work under this Agreement, Independent Design Professional shall procure, maintain and provide insurance certificates, policies and endorsements, in at least the amounts shown in the table contained within this Section 5.4.1 and with indemnification limits not less than the amounts indicated therein, to protect Independent Design Professional and Owner from claims arising out of the performance of the Independent Design Professional’s services under this Agreement and/or caused by any error, omission, negligent act or omission, or design defect by an Engineer/engineer employed by or contracted by the Independent Design Professional. The required coverage shall be maintained without interruption from the date of commencement of the Work until the date of final payment, and termination of any coverage required to be maintained after final payment.

Worker’s Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Independent Design Representative’s employment of workers and anyone for whom Independent Design Representative shall be liable for Worker’s Compensation claims. Worker’s Compensation is required and no “alternative” form of insurance shall be permitted.
Employers Liability	\$1,000,000.00 per accident \$1,000,000.00 per disease policy limit \$1,000,000.00 per disease per employee
Professional Liability: Independent Design Professional	\$1,000,000.00 per claim and \$2,000,000.00 in the aggregate
Independent Design Professional’s Consultants	\$2,000,000.00 in the aggregate.

<p>Commercial General Liability:</p> <ul style="list-style-type: none"> • Each Occurrence • General Aggregate • <u>Products - Completed Operations hazard</u>, providing coverage for claims including: <ol style="list-style-type: none"> 1. damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person; 2. personal and advertising injury; 3. damages because of physical damage to or destruction of tangible property, including the loss of use of such property; 4. bodily injury or property damage arising out of completed operations; and 5. the Independent Design Representative's indemnity obligations provided for in this Contract 	<p>\$1,000,000.00 \$2,000,000.00 \$1,000,000.00 aggregate</p>
<p>Automobile Liability</p>	<p>\$1,000,000.00 combined single limit Coverage shall be for all owned, non-owned and hired motor vehicles, and any other statutorily required automobile coverage.</p>
<p>Excess Umbrella Liability</p>	<p>\$5,000,000.00</p>

5.4.2 The required insurance such insurance shall be in a form approved by the Owner, with an effective date prior to the beginning date of design. All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, [www.ambest.com], and that permits waivers of subrogation. Any deviation from the requirements of Section 5.4 (including all subsections) can only be approved by Owner's Board of Trustees.

5.4.3 Satisfactory evidence of insurance required by this Article shall be provided to Owner not later than five (5) business days after execution of the Contract by Owner. Satisfactory evidence shall include a duly-executed ACORD Form 25 Certificate of Liability evidencing the endorsements required and notations required by this Contract, copies of all required insurance policies, declarations and endorsements themselves. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements, as they are provided to Independent Design Professional. Each certificate shall contain a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar day's prior written notice to Owner.

5.4.4 Notice of Cancellation, Expiration and Continuation

5.4.4.1 Within three (3) business days of the date the Independent Design Professional becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Independent Design Representative shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Independent Design Professional, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Independent Design Professional. The furnishing of notice by the Contractor shall not relieve the Independent Design Professional of any contractual obligation to provide any required coverage.

5.4.4.2 The certificates and the insurance policies required by this Section 5.4.1 shall contain a provision stating that coverages afforded under the policies will not be canceled for any reason, other than nonpayment of premium, or reduced or restricted due to a material change in coverage, until at least thirty (30) days' prior written notice of such cancellation or material change has been given to the Owner.

5.4.4.3 An additional certificate, policy and endorsement evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the Independent Design Professional's final Invoice, and thereafter upon renewal or replacement of such coverage until the expiration of the time period(s) required by the terms of this Agreement. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Independent Design Professional with reasonable promptness.

5.4.5 All insurance required herein shall, by endorsement, be primary and non-contributory insurance with respect to the Owner, its officers, employees, representatives or agents and shall seek no contribution from any insurance available to Owner. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged. A copy of such endorsement or endorsements shall be provided to the Owner at the same time as the Insurance Certificates required above.

5.4.6 **Additional Insured Obligations.** The Independent Design Professional shall cause naming Owner, its officers, employees, representatives and agents, to be named as an additional insured on the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability. Evidence of additional insured status will be provided to Owner by providing a copy of the endorsement being utilized to effect the additional coverage and shall be subject to the Owner's reasonable approval.

5.4.7 Independent Design Professional shall furnish to Owner insurance certificates, policies and endorsements upon request at any time during the applicable statute of limitations if Independent Design Professional neglects or refuses to provide any insurance required herein, or if any insurance is canceled, and not replaced, Owner may, but shall not be obligated to, procure such insurance at Independent Design Representative's expense or may treat such failure as a default under this Contract.

5.4.8 Insurance provided pursuant to this Section shall be considered a part of the Independent Design Professional's basic services and shall not be a Reimbursable Expense under this Agreement.

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

5.4.10 The Independent Design Professionals failure to comply with any of these provisions is a breach of contract by the Independent Design Representative that entitles the Owner to declare the contract void if the Independent Design Representative does not remedy the breach within ten days after receipt of notice of breach from the Owner.

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

5.4.12 The Independent Design Professional Commercial General Liability policy under this Section 5.4 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity provided in this Contract, arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

5.4.13 **Disclosure of Deductibles.** The Independent Design Professional shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Independent Design Representative. If the insurance is written with stipulated amounts deductible under the terms of the policy, the Independent Design Professional shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Independent Design Professional to maintain such insurance and to so notify the Owner, then the Independent Design Professional shall bear all reasonable costs properly attributable thereto.

5.5. **Indemnification.**

5.5.1. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE INDEPENDENT DESIGN PROFESSIONAL WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, THE OWNER'S CONSULTANTS, THE ENGINEER, THE ENGINEER'S CONSULTANTS, AND THE AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE INDEPENDENT DESIGN PROFESSIONAL, A SUBCONTRACTOR, SUBCONSULTANT ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER, OWNER'S TRUSTEES, OWNER'S CONSULTANTS, THE ENGINEER AND THE ENGINEER'S CONSULTANTS, OR THE AGENTS OR EMPLOYEES OF ANY OF THEM, WHERE THAT NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE. IN SUCH EVENT, WHERE THE NEGLIGENCE OF OWNER, THE ENGINEER OR THE NEGLIGENCE OF ANY OTHER PARTY INDEMNIFIED HEREUNDER, IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE, INDEPENDENT DESIGN PROFESSIONAL'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF**

OWNER, ENGINEER AND INDEPENDENT DESIGN PROFESSIONAL TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ENGINEER AND INDEPENDENT DESIGN PROFESSIONAL ARE ALL PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 5.5.

5.5.2. IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 5.5 BY AN EMPLOYEE OF THE INDEPENDENT DESIGN PROFESSIONAL, A SUBCONTRACTOR, SUBCONSULTANT, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE INDEPENDENT DESIGN PROFESSIONAL OR A SUBCONTRACTOR OR SUBCONSULTANT UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

5.5.3 The Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, and/or its consultants pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Independent Design Professional is to comply with said statutes in performance of the Work by Independent Design Professional and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Independent Design Professional.

5.5.4 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Paragraph 5.5, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

5.5.5 The provisions of Article 5.5 in its entirety shall survive the completion, termination or expiration of this Agreement.

5.5.6 Each agreement between Independent Design Professional and its subcontractors shall include provisions requiring Independent Design Professional's subcontractors and subconsultants to the fullest extent allowed by law, to indemnify, defend (with counsel reasonably acceptable to Owner), and hold harmless Owner and the Independent Design Professional from and against all injuries, loss, causes of action, claims, liability, damages or judgments, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of negligent acts and/or errors and/or omissions of Independent Design Professional's subcontractor's performance of the Work.

5.6. Audit and Retention of Books and Records.

5.6.1. Independent Design Professional shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to the Owner.

5.6.2. Owner and/or its accountants, auditors, and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of the Independent Design Professional's information, materials, records or data relating to this Project, including but not limited to, accounting records, estimating Work sheets, correspondence, change order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions recordings, computerized information, drawings, agreements, and other information, materials, records or data relating to this Project ("Records").

5.6.3. Independent Design Professional shall preserve the Records for a period of twelve (12) years after final payment or for such longer period as required by law, provided, however, that if a Dispute is asserted during said 12-year period, the Independent Design Professional shall retain all such Records until the Dispute has been resolved.

5.6.4. Independent Design Professional shall require all payees to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the Independent Design Professional and the payee.

5.6.5. Owner and its accountants, auditors and agents shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article, and Owner and its accountants, auditors and agents agree to perform all of their work in that space and not elsewhere in the Independent Design Professional's offices, to not interact with the Independent Design Professional's employees, and to not otherwise unreasonably interfere or disrupt the work of the Independent Design Professional's employees.

5.7. **Proprietary Interests And Confidential Information**

5.7.1. Independent Design Professional shall not use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Independent Design Professional shall not have any authority to advertise or claim that Owner endorses Independent Design Professional's services, without Owner's prior written consent.

5.7.2. Independent Design Professional acknowledges and agrees that any Confidential Information disclosed to it, its subcontractors or other representatives pursuant to this Agreement shall be used only for the purposes contemplated in this Agreement, shall be kept confidential and in conformance with all state and federal laws relating to data privacy, and shall remain the Owner's property. The term "Confidential Information" means all Owner knowledge, information, data, materials and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Independent Design Professional and its agents, employees, contractors and consultants with respect to the Project. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that Independent Design Professional can show (by contemporaneous written records) that Independent Design Professional had it in its possession before beginning the Project and before disclosure by Owner. Independent Design Professional agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section. Independent Design Professional agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section. Independent Design Professional and its employees, agents, contractors and consultants shall not make or otherwise disseminate any public announcement or press release with respect to the Project without the Owner's prior written approval.

5.7.3. The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, et seq., and the Texas Open Meetings Act, Texas Government Code, Section 551.001, et seq.

5.7.4. Within fifteen (15) days of the completion or earlier termination of this Agreement, or upon earlier Independent Design Professional, upon the request of Owner, shall destroy all copies of such Owner provided data, documents, or information in Independent Design Professional's possession or control, and provide Owner with proof of such destruction.

5.8. **Ownership of Works, Intellectual Property Rights.**

5.8.1. The term "Works" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which are to be prepared for Owner and delivered under this Agreement. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by Owner. Independent Design Professional agrees that all copyrightable Works shall be considered a "work made for hire" and that Owner

is the author of and owns all rights in and to the Works, and agrees that if the Works may not be considered a work made for hire under 17 U.S.C., Sections 101 and 201(b), Independent Design Professional shall without further compensation, assign all rights Independent Design Professional may have in the Works to Owner. Independent Design Professional waives any and all statutory moral rights in the Works which Independent Design Professional may have arise under 17 U.S.C. 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of moral right. Independent Design Professional shall, without further compensation, disclose information to Owner and execute such documents as may be reasonably necessary to assist Owner in securing and enforcing rights in the Works and related proprietary rights.

5.8.2. Owner shall be the owner of and have all common law, statutory, and other reserved rights in all representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Independent Design Representative and the Independent Design Representative's consultants under their respective professional services agreements, including, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials (the "Instruments of Service"). Independent Design Professional shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights. Independent Design Professional is authorized to use and reproduce the Instruments of Service provided to it solely and exclusively for execution of the work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. Independent Design Professional may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the work without the specific written consent of the Owner, which the Owner may withhold in its sole discretion.

5.9. **Warranty.** Independent Design Professional represents and warrants that the Independent Design Professional will perform the services consistent with the professional skill and care ordinarily provided by professional architect/engineers (as applicable practicing in the same or similar locality under the same or similar circumstances. Independent Design Professional shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Independent Design Professional warrants and certifies that the Independent Design Professional is properly certified and licensed in the jurisdiction where the Project is located the provide the services under this Agreement (or shall cause such services to be performed by appropriately licensed design professionals).

5.10. **Conflict of Interest.** Independent Design Professional affirms that, to the best of its knowledge, no actual or potential conflict exists between Independent Design Professional's family, business or financial interests and its services under this Agreement, and that it shall raise with Owner any questions regarding possible conflict of interest that may arise. Independent Design Professional further affirms that it shall not hire any officer or employee of Owner to perform any service covered by this Agreement. If the Work is to be performed in connection with a federal contract or grant, Independent Design Professional shall not hire any employee of the United States Government to perform any service set forth herein.

5.11. **Taxes.**

5.11.1 The Independent Design Professional shall not include in the in its pricing or invoicing, any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. **INDEPENDENT DESIGN PROFESSIONAL HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF INDEPENDENT DESIGN PROFESSIONAL OR ANY SUBCONTRACTOR OR SUBCONSULTANT TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.**

5.11.2 Upon execution of this Agreement, Independent Design Professional will provide to Owner a signed IRS Form W-9.

5.12. **Use of Owner Name or Logo.** Independent Design Professional agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with Owner or the name of any representative of Owner in any sales promotion work or advertising, or any form of publicity, without Owner’s written permission in each instance.

5.13. **Independent Contractor.** INDEPENDENT DESIGN PROFESSIONAL SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OF OWNER. NEITHER INDEPENDENT DESIGN PROFESSIONAL NOR ANY AGENT OR EMPLOYEE OF INDEPENDENT DESIGN PROFESSIONAL SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF OWNER. INDEPENDENT DESIGN PROFESSIONAL SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX ON ANY MONIES PAID PURSUANT TO THIS AGREEMENT. INDEPENDENT DESIGN PROFESSIONAL ACKNOWLEDGES THAT INDEPENDENT DESIGN PROFESSIONAL AND ITS EMPLOYEES ARE NOT ENTITLED TO TAX WITHHOLDING, WORKER’S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR ANY EMPLOYEE BENEFITS, STATUTORY OR OTHERWISE. INDEPENDENT DESIGN PROFESSIONAL SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND OWNER TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. INDEPENDENT DESIGN PROFESSIONAL SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF INDEPENDENT DESIGN PROFESSIONAL, ITS EMPLOYEES, AND AGENTS.

5.14. **Notices.** Any notice provided for in or permitted under this Agreement shall be made in writing, and may be given or served by (i) delivering the same in person or by e-mail or facsimile transmission to the party to be notified, or (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, or (iii) by depositing same with a reputable overnight courier service. If notice is deposited in the United States mail pursuant to clause (ii) of this Section, it will be effective from and after the day it is received by the addressee or receipt thereof is refused by the addressee, unless such day is not a business day, and then it shall be deemed received on the next business day. Notice given in any other manner shall be effective only if and when received by the party to be notified unless the day it is received is not a business day, and then it shall be deemed received on the next business day. For the purpose of notice, the address of the party shall be, until changed as hereinafter provided for, as follows:

If to Owner:
CALALLEN INDEPENDENT SCHOOL DISTRICT Attn: Emily Lorenz, Superintendent of Schools 4205 Wildcat Drive Corpus Christi, Texas 78410 Email: elorenz@calallen.org
If to Independent Design Professional:
Company Name CEI Engineering Associates, Inc. Attn: Jeff Bresee Address: 3030 LBJ Freeway, 9th FL Suite 920, Dallas, TX 75234 Phone: (972) 488-3737 E-mail: jbresee@ceieng.com

or to such other address as the Owner may specify in a written notice to the Independent Design Professional or the Independent Design Professional may specify in a written notice to the Owner in accordance with this Section. Each party shall have the right from time to time and at any time to change its respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days’ written notice to the other party. Each

party shall have the right from time to time to specify additional parties to whom notice hereunder must be given by delivering to the other party fifteen (15) days' written notice thereof setting forth the address of such additional party or parties; provided, however, that no party shall have the right to designate more than three (3) such additional parties.

5.15. **Non-Waiver.** No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

5.16. **Assignment.**

5.16.1 Independent Design Professional may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer or any other means, without the prior written consent of Owner. Engineerural and/or Engineering services required by law to be performed by a licensed engineer or Engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the Owner. Any other services to be performed under this Agreement may be subcontracted upon the written approval of Owner's representative. As a condition of consent, if same is given, Independent Design Professional shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Independent Design Professional, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Owner in accordance with this Article. The following individuals or entities have been approved by the Owner for subcontracting by the Independent Design Professional at the time of execution of this Agreement:

5.16.2. Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Independent Design Professional assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, Owner may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Independent Design Professional shall thereupon cease and terminate, notwithstanding any other remedy available to Owner under this Agreement. The violation of this provision by Independent Design Professional shall in no event release Independent Design Professional from any obligation under the terms of this Agreement, nor shall it relieve or release Independent Design Professional from the payment of any damages to Owner, which Owner sustains as a result of such violation.

5.16.3. Independent Design Professional agrees to notify Independent Design Professional of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to Owner under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement agrees to notify Independent Design Professional of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to Owner under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement

5.17. **Severability.** If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.

5.18. **Survivability.** The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

5.19 **Force Majeure.** In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign

conduct, epidemic, pandemic or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

5.20 **No Third-Party Beneficiaries.** For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with Owner or Independent Design Professional or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Owner or Independent Design Professional.

5.21. Required Statutory Provisions.

5.21.1 **Israel Boycott.** Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the Independent Design Professional has at least ten (10) full time employees, then the Independent Design Professional by its execution of this Agreement represents and warrants to the Owner that the Independent Design Professional does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

5.21.2 **Family Code Certification.** By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, the Independent Design Professional certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated, and payment withheld if this certification is inaccurate.

5.21.3 **Terrorist Certification.** Independent Design Professional 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 Independent Design Professional has misrepresented its inclusion on the Texas Comptroller's list such omission or misrepresentation will void this Agreement

5.21.4 **Chapter 552 Certification.** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Independent Design Professional agrees that the contract can be terminated if the Independent Design Professional knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars (\$1,000,000.00) or more, the Independent Design Professional agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

5.21.5 **Energy Company Boycott.** Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Independent Design Professional has at least ten (10) full-time employees, then Independent Design Professional represents and warrants to the Owner that the Independent Design Professional does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This provision does not apply to sole proprietorships

5.21.6 **Firearm and Ammunition Discrimination.** Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Independent Design Professional has at least ten (10) full-time employees, then Independent Design Professional represents and warrants to the Owner that the Independent Design Professional does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This provision does not apply to sole proprietorships.

5.21.7 **Non-Abortion Provider Certification.** Pursuant to Texas Government Code Chapter 2273, Independent Design Professional represents and warrants that it not an abortion provider or an affiliate of an abortion provider.

5.21. **Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. A facsimile signature will constitute an original and binding signature of a party. This Agreement is entered into as of the Effective Date.

OWNER:

CALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
Ms. Emily Lorenz, Superintendent of Schools

Date: _____

INDEPENDENT DESIGN PROFESSIONAL:

COMPANY NAME: CEI ENGINEERING ASSOCIATES, INC.

By: _____
Mr. Jeff Geurian, CEO

Date: _____

EXHIBIT A

SCOPE OF SERVICES – INDEPENDENT DESIGN PROFESSIONAL

BASIC SERVICES:

During the Term of this Agreement Independent Design Professional shall provide the following services shall be Basic Services:

Phase I – 3rd Party Independent Engineering Services - Design review, permitting assistance, construction management assistance, and observation of work

1. Attend design kickoff meeting in person to meet team members from the Owner and Design Build Contactor; to make observation of the project site(s) and to assist in determining and establishing the requirement for and scope of the improvements that will be covered under the Design Build Contractor's contract. Thereafter, attend design review meetings virtually with the Design Build Contractor and the Owner.
2. Provide third party review of all reports, construction drawings & specifications and product data sheets that are submitted by the project Design Build Contractor and, provide review and comment on all submitted materials, as necessary, to the Design Build Contractor and Owner. This shall include ensuring that in Independent Design Professional's opinion, all quality control measures are incorporated into the product documentation including minimum requirements for material quality, workmanship quality and for materials testing to be conducted during construction.
3. Provide completeness and thoroughness check of all materials created by the Design Build Contractor prior to their submission of permitting package to the City of Calallen and/or other governmental bodies holding jurisdiction over the project.
4. Provide permitting assistance to the Design Build Contractor and the Owner including review of the Design Build Contractor's response(s) made to comments received from the City of Calallen and/or other governmental bodies holding jurisdiction over the projects. This shall include completeness and thoroughness check and review and comment, as necessary, of the Design Build Contractor's response(s) made. Also, as needed, attend meetings with the City of Calallen and/or other governmental bodies holding jurisdiction over the project virtually, to clarify understanding of permitting requirements and to resolve any issues that may arise.
5. Provide construction administration assistance including review and approval of product submittals, providing response to RFI's, issuing price requests and change directives if needed, and review and comment of contractor pay applications.
6. Attend construction progress meeting virtually (for meetings when no on-site observation detailed below is to occur) and in person (for meetings when on-site observation is to occur) to assist with project correspondence and tracking of project progress and budget, and with project quality control.
7. Coordinate materials testing services with the independent materials testing company (to be employed separately by the Owner) and receive and interpret materials testing results. For all failed tests, Independent Design Professional will coordinate further with the materials testing company to provide further testing until test is passed.
8. Provide on-site observations at critical points during construction to observe materials and workmanship during the construction process and submit written observation notes to the Design Build Contractor and the Owner

for each site visit. These visits shall be primarily at key points during construction when work is ready for key tests or critical observations by Independent Design Professional but shall at least once per month. Key observations are anticipated to be: upon completion of subgrade/base work to observe proof roll tests of the subgrade of both fields; upon completion of crushed stone under-drain installation and fine grading to observe string line test of each field, upon the completion of the synthetic turf carpet installation to make observation of carpet and seams prior to turf infill process.

9. Upon the completion of the synthetic turf infill process for both fields, make an on-site observation of all work along with Owner's staff and Design Build Contractor staff so as to create the project punch list and issue project punch list to the Owner and Design-Build Contractor and the Owner.

10. Provide (1) one on-site observation of punch list work to observe completion of all punch list work and submit observation report of finding to the Owner and Design-Build Contractor and the Owner.

The Owner shall also provide to the Independent Design Professional, the following items:

1. As-Built drawings as may exist of each project site depicting existing conditions.
2. Pdf copies of all project paperwork including reports, construction drawings, specifications, government issued permit review responses, product data sheets, requests for information, price requests and pay applications.
3. Access to the project sites

ADDITIONAL SERVICES:

In addition to the services described above, Independent Design Professional is capable and available to provide the following services on an "as requested" basis. An Extra Work Authorization (EWA) form or contract amendment will be issued for any services outside the scope of this proposal. All EWA's or contract amendments will be approved and signed by the Client identified herein prior to beginning work. All additional services will be performed on an hourly basis per the current Schedule of Charges.

- Design work including the creation of project construction drawings, specifications, and reports related to the baseball and softball field improvements.
- Feasibility study, including physical, political, and/or financial opportunities or constraints
- Contract management and coordination of subconsultants including, but not limited to, the follow services:
 - Topographic and/or boundary survey
 - Geotechnical investigations and reports
 - Environmental studies/report (e.g. Phase I & II ESAs)
 - Traffic study/report
 - Water flow test/distribution report
 - Historical and archeological studies
 - Ecological studies (e.g. wetland and threatened & endangered species)
- Preparation of perspectives, renderings, and models
- Attendance/presentation at public meetings (e.g. Planning Commission, City Council, Zoning Board of Appeals, Board of Adjustments, etc.)
- Preparation/presentation of conditional or special use permit applications
- Obtaining new or updated title policies
- Platting/replatting

- Preparation of easement and right of way documents, including new and vacations/abandonments
- Preparation of covenant and development agreements
- Preparation of a drainage study/report
- Design and plan preparation for major stormwater drainage improvements or relocations (e.g. box culverts, large ditches, and storm sewers greater than 4-foot in diameter)
- Preparations of flood studies, elevation certificates, FEMA or Corp of Engineer applications or permits
- Preparation of SWPPP documentation, applications or permits for stormwater pollution prevention plans, NOIs, etc.
- Design and plan preparation for offsite utility extensions other than those immediately adjacent to the project site
- Design and plan preparation for offsite street improvements, such as road widenings, acceleration/deceleration lanes, and medians (design/plans for both curb cuts and municipal sidewalks along the site frontage will be included in the basic services for design projects)
- Preparation of retaining wall design/plans
- Photometric design/preparation of site lighting plans
- Preparation of opinions of probable construction costs (OPCs)
- Materials Testing
- Construction staking
- As-built survey/preparation of final record drawings

EXHIBIT B
INDEPENDENT DESIGN PROFESSIONAL'S TEAM

Mr. Jeffrey Bresee, PE
Email: jbresee@ceieng.com
3030 LBJ Freeway, 9th FL Suite 920, Dallas, TX 75234
972.488.3737
877.488.3737
info@ceieng.com

<p>EXHIBIT D INDEPENDENT DESIGN PROFESSIONAL’S COMPENSATION AND TERMS OF PAYMENT</p>

Independent Design Professional proposes to provide all service included in **EXHIBIT A**, Scope of Services, for:

BASIC SERVICES

For the Basic Services described in Exhibit A: Phase I Fees shall be 1.50% of the cost of construction based upon the final pay application issued by the project Design Build Contractor for the project. This fee includes all reimbursable expenses.

ADDITIONAL SERVICES

For any Additional Services listed in Exhibit A:

If additional services are requested by the Owner, said extra work shall be agreed upon by means of an Extra Work Authorization between Independent Design Professional and the Owner. Charges for such work shall be divided into three categories: Labor, Consultants, and Reimbursable Expenses.

LABOR: For fees billed on an hourly basis, labor charges are billed by category as follows:

TEXAS (01-01-23)

Officer / Branch Manager	\$ 235.00
Department Manager	\$ 210.00
Client Sector Leader	\$ 200.00
Senior Project Manager	\$ 195.00
Program Manager	\$ 185.00
Project Manager	\$ 175.00
Assistant Project Manager	\$ 140.00
Senior Project Engineer	\$ 185.00
Project Engineer	\$ 165.00
Assistant Project Engineer	\$ 135.00
Civil Designer	\$ 125.00
Registered Landscape Architect	\$ 160.00
Assistant Landscape Architect	\$ 130.00
Landscape Architect Designer	\$ 125.00
Registered Land Surveyor	\$ 165.00
Assistant Project Surveyor	\$ 130.00
Survey Project Manager	\$ 160.00
Assistant Survey Project Manager	\$ 130.00
Sr. Survey Party Chief	\$ 115.00

Survey Party Chief	\$ 95.00
Survey Technician	\$ 105.00
Field Specialist	\$ 85.00
Senior Project Designer	\$ 150.00
Project Designer	\$ 130.00
CAD Designer	\$ 105.00
CAD Technician	\$ 90.00
Construction Observer	\$ 110.00
Land Acquisition Specialist	\$ 130.00
Project Coordinator	\$ 120.00
Program Assistant	\$ 90.00
Administrative Assistant	\$ 75.00

SUB-CONSULTANT SERVICES: In cases where CEI retains another consultant to provide services outside of our area of practice, cost of such services will be charged at 110% of actual invoice cost.

REIMBURSABLE EXPENSES: Outside services, and related materials, will be charged at the actual invoice cost. In addition, direct out-of-pocket costs such as postage, delivery services, travel (other than vehicle mileage), and subsistence expenses will be charged at actual costs. Vehicle mileage is billed at the applicable I.R.S. rate allowed per mile.

All impact, permitting, expediting, and review fees will be charged at 15% over the cost of the fee unless the client is willing to pay those fees directly to the service provider.