

REQUEST FOR PROPOSAL

TABLE OF CONTENTS

REQUEST FOR PROPOSAL.....	2
INSTRUCTIONS TO OFFERORS.....	5
PROPOSAL FOR SUBMITTAL FORM.....	11
PROPOSAL SECURITY (BID BOND).....	14
COMPLIANCE TO STATE LAW ON NON-RESIDENT BIDDERS.....	15
COMPLIANCE TO TEXAS TAX CODE.....	16
CONFLICT OF INTEREST QUESTIONNAIRE FORM CIQ.....	17
OFFEROR'S QUALIFICATIONS.....	19
OFFEROR'S PROJECT EXPERIENCE AND RESOURCES.....	20
NON-COLLUSION AFFIDAVIT.....	22
PERFORMANCE BOND.....	24
PAYMENT BOND.....	25
CONSTRUCTION CONTRACT.....	26

REQUEST FOR PROPOSAL

ARTICLE I GENERAL NOTICE

- 1.01.** Midland County Utility District is requesting competitive sealed Proposals for the construction of the following project:

Project Description: MCUD Metal Building Administrative Facility-Phase I

Project Address: 4218 S. County Road 1140, Midland, Texas 79706

- 1.02.** Project Scope of Work

- a.** Foundations
- b.** Slab-on-grade
- c.** Under-slab utilities
- d.** Pre-engineered metal building shell
- e.** Exterior storefront and glazing systems
- f.** Exterior architectural elements

- 1.03.** The Opinion of Probable Construction Cost for this project is \$350,000

ARTICLE II OBTAINING AND EXAMINING DOCUMENTS

- 2.01.** Information for the project can be found at the following website:

www.mcud.org

- 2.02.** Prospective Offerors must register with the website as a plan holder, even if contract documents are obtained from a plan room or other site. All official notifications, addenda and other documents will be offered only through the website.

- 2.03.** It is the plan holder's responsibility to determine that a complete set of documents are used in the preparation of a Proposal. Documents are made available for the sole purpose of obtaining Proposals for completion of the project and permission to download does not confer a license or grant permission or authorization for any other use. Authorization to download documents includes the right for plan holders to print documents for their sole use, provided they pay all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.

**ARTICLE III
PRE-PROPOSAL MEETING**

- 3.01.** No pre-Proposal meeting will be held for this Project.

**ARTICLE IV
QUESTIONS REGARDING PROPOSAL PROCESS OR CONTRACT
DOCUMENTS**

- 4.01.** Questions must be submitted via email to Miguel.Garza@mcud.org. Design and architectural questions must be submitted via email to Josh.Stark@mcud.org. A response will be given for questions submitted by end of day August 7, 2026.
- 4.02.** Modifications to the contract documents prior to the award of contract can only be made by addenda. Only answers in an addendum authorized by the District will be binding. Oral and other interpretations or clarifications will be without legal effect.

**ARTICLE V
PROPOSAL SECURITY**

- 5.01.** Each Proposal must be accompanied by a bid bond of at least two (2) percent of the total amount of the Proposal issued by a surety legally authorized to do business in the State of Texas. The Proposal security shall be a guarantee that, if awarded the contract, the Offeror will promptly enter into a contract in the form attached hereto and furnish any necessary bonds required by the District within ten (10) calendar days after the Contract has been awarded. The Proposal security shall be forfeited to the District should the Offeror fail to enter into a contract and/or fail to provide acceptable bonds. The bid bond shall be made payable to the Midland County Utility District.

**ARTICLE VI
DELIVERY OF PROPOSALS**

- 6.01.** Sealed Proposals must be delivered to Midland County Utility District at the address below no later than 10:00 a.m./p.m. CST on August 13, 2026 to be accepted. The Proposals will be publicly opened and read aloud at this time and location. Proposals received after this time will be returned unopened. Address Proposals as follows:

Midland County Utility District
Attention: Miguel Garza
415 W. Wall Street, #1815
Midland, Texas 797017

**ARTICLE VII
PROJECT PLANNING SCHEDULE**

EVENT	ANTICIPATED DATE
Release of Request for Proposal	Friday, July 24, 2026
Pre- Proposal Meeting	N/A (Upon Request)
Deadline for Questions	Friday, August 7, 2026
Proposal Submittals Due	Thursday, August 13, 2026
Evaluations and Discussions	Thursday, Friday, August 13 & 14, 2026
Request for Board Approval	N/A (Already Obtained)
Issuance of Notice of Award	Monday, August 17, 2026
Post Proposal Documents Due	Friday, August 21, 2026
Start Date	Friday, August 21, 2026
Project Completion Date	Friday, November 20, 2026

Advertisement Publish Dates: Tuesday, July 28, 2026
 Tuesday, August 04, 2026

INSTRUCTIONS TO OFFERORS

ARTICLE I DEFINED TERMS

- 1.01.** Terms used in these Instructions to Offerors have the meaning indicated in the General Conditions.

ARTICLE II PRE- PROPOSAL MEETING

- 2.01.** No pre-Proposal meeting will be held for this Project.

ARTICLE III INTERPRETATION OF THE CONTRACT DOCUMENTS

- 3.01.** Questions are to be submitted via email to Miguel.Garza@mcud.org. All such questions must be received prior to Proposal opening.
- 3.02.** Ask questions early. The deadline for questions will not be extended unless the date for receipt of Proposals is extended. No response will be made to questions asked after the deadline.
- 3.03.** Responses to questions are not part of the Contract Documents and cannot modify the Contract Documents. An addendum may be issued to clarify, correct or change the contract documents, addenda or related supplemental data and will be provided to all Offerors.

ARTICLE IV RESTRICTION OF COMMUNICATION

- 4.01.** All communication must be in accordance with Article 4 of the Request for Proposal.

ARTICLE V REQUESTS FOR ALTERNATE PRODUCTS

- 5.01.** Submit requests for alternate items not in strict compliance with the bidding document no later than ten (10) days before the Proposals are due. Requests shall be submitted via email to Miguel.Garza@mcud.org.

ARTICLE VI
EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- 6.01.** Use a complete set of the Contract Documents in preparing Proposals. Offeror assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.
- 6.02.** Before submitting a Proposal:
- a.** Examine and carefully study the Contract Documents, including any addenda and related supplemental data.
 - b.** Become familiar with laws and regulations that may affect cost, progress or the completion of this project.
 - c.** Examine and be thoroughly familiar with job/site conditions.
 - d.** Promptly notify the District of all conflicts, errors, ambiguities, or discrepancies that the Offeror discovers in the Contract Documents, addenda and the related supplemental data.
 - e.** Determine that the Contract Documents, addenda and the related supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for completion of the project.

ARTICLE VII
PREPARATION OF PROPOSALS

- 7.01.** Submit Proposal on Proposal Form included with the Contract Documents. The Proposal Form shall be fully filled in, using ink or typewriter, and Base Proposal amount shall be in words as well as in figures. Every blank without an entry shall contain a mark to show that it was not unintentionally left blank.
- 7.02.** Proposal shall not contain recapitulation of requirements, nor stipulations added by Offeror. Do not add words or other markings, except where indicated. Alternate Proposals will not be considered except as called for in the Contract Documents.
- 7.03.** Proposal shall include the legal name of Offeror and legal description of firm, such as sole proprietor, partnership, or corporation. A Proposal by a corporation shall have the corporate seal affixed and indicate the state of incorporation. A Proposal submitted by an agent shall include a valid power of attorney certificate verifying authority to bind Offeror.
- 7.04.** The signature shall be in longhand, written in ink, and executed by a principal or corporate executive duly authorized to bind Offeror to a contract. Include signer's full legal name. The submitted Proposal Form shall be without modifications, except to fill in blanks, and shall be unmodified by interlineation, alteration, or erasure.

- 7.05.** Proposal shall include a breakdown where indicated in the Proposal Form, for use by the District in evaluating the Proposal. Offeror affirms that the dollar amounts given include their respective proportionate share of overhead and profit.
- 7.06.** Midland County Utility District is a governmental body subject to Texas Government Code Chapter 552 (the “Act”). All material submitted to Midland County Utility District and is subject to the Act upon receipt. If an Offeror does not wish proprietary information in the Proposal to be disclosed, each page must be identified and marked “Proprietary” at time of submittal. Upon request for disclosure of information marked as “Proprietary” the Midland County Utility District shall notify Offeror as required by the Act. Offeror is solely responsible for submitting any arguments, authorities or other information to the Attorney General of Texas regarding release of claimed proprietary information. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request. Midland County Utility District shall have no liability for information disclosed pursuant to the Act.
- 7.07.** Acknowledge receipt of all addenda by filling in the number and date of each addendum. Provide a signature as indicated to verify that the addenda were received. A Proposal that does not acknowledge the receipt of all addenda may be considered non-responsive.
- 7.08.** Provide other information as indicated in the Proposal Form.

ARTICLE VIII MODIFICATION, WITHDRAWAL OR NO PROPOSAL

- 8.01.** Proposals may be modified or withdrawn by an appropriate document duly executed and delivered to the place where Proposals are to be submitted at any time prior to the opening of the Proposals. Oral modifications or withdrawals will not be considered.
- 8.02.** Offeror may withdraw their Proposal in writing via email to Miguel.Garza@mcud.org no later than the Proposal due date and time.
- 8.03.** If Offeror chooses not to Proposal on the project, the District would appreciate a formal “no proposal” submitted via email to Miguel.Garza@mcud.org with a brief explanation for the no Proposal.

ARTICLE IX SUBMISSION OF PROPOSALS

- 9.01.** Proposals shall be submitted in a sealed manner prior to the due date and time. The sealed envelope shall be plainly marked and include the Offeror’s name and address, Proposal number, Proposal description and the due date and time.

- 9.02.** It is the sole responsibility of the Offeror to ensure timely delivery of the Proposal. The District will not be responsible for failure of service on the part of the U.S. Postal Service, courier companies, or any other form of delivery service chosen by the Offeror.
- 9.03.** Any Proposal received after the required date and time will be considered late and will not be accepted or considered. Late Proposals will be returned to the Offeror unopened.
- 9.04.** Should a deadline be compromised due to inclement weather or other situation where the District's offices are closed, Proposals will be accepted until 5:00 p.m. CST the next business day after the District reopens.
- 9.05.** Submit name of the person, firm or corporation that will execute the performance and payment bonds together with an affidavit evidencing that person or entity's execution authority.

ARTICLE X OPENING OF PROPOSALS

- 10.01.** Only the name of the submitting Offerors will be read aloud at the District, 415 W. Wall Street, #1815, Midland 79701 at the due date and time. Monetary values will not be disclosed.

ARTICLE XI PROPOSAL EVALUATION AND AWARD OF CONTRACT

- 11.01.** The District reserves the right to reject all Proposals, waive formalities, or disregard nonconforming, conditional Proposals or counter Proposals.
- 11.02.** All properly submitted Proposals will be reviewed, evaluated and ranked by an evaluation committee established by the District.
- 11.03.** Best and Final Offers - The evaluation committee will determine if Best and Final Offers are necessary but award of contract may be made without best and final offers. A request for a best and final offer is at the sole discretion of the District and will be extended in writing to each qualified Offeror.
- 11.04.** The District shall award a contract to the Offerors whose Proposal is considered to provide the best value to the District based on the following weighted criteria:

Criteria	Weighted Value
Price	50%
Experience of Team and Firm	25%
Schedule	25%

- 11.05.** The District reserves the right to reject the Proposal of any Offeror which does not meet the above criteria and/or other terms and conditions expressed herein to the

District's satisfaction. Offeror may also be disqualified and their Proposal not considered, among other reasons, for any of the following specific reasons:

- a. Reason for believing collusion exists between Offeror and other Offerors;
- b. Reasonable grounds for believing that any Offeror has a financial interest in more than one Proposal for the work contemplated;
- c. The Offeror being a party to or having a financial interest in any litigation against the District;
- d. The Offeror being in arrears on any existing contract or having defaulted on a previous contract;
- e. Lack of ability to perform the contract, if awarded to Offeror, as reflected by Offeror's financial statement, experience and equipment, references prior work history, or answer to questionnaires;
- f. Uncompleted work, which in the sole judgment of the District, will prevent or hinder the prompt completion of additional work, if the contract is awarded to Offeror;
- g. Qualifying statements or accompanying qualifying letters.

11.06. The District reserves the right to interview the top ranked Offerors to assist in the evaluation process. The District is under no obligation to grant interviews to any Offerors receiving a copy of this Proposal and/or submitting a written Proposal in response to this Proposal.

ARTICLE XII PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

12.01. All Proposal will remain subject to acceptance for ninety (90) calendar days after the Proposal opening, but the District may, at its sole discretion, release any Proposal and return the Proposal security prior to the end of this period.

ARTICLE XIII BACKGROUND CHECKS

13.01. Upon request of the District, Offeror shall perform background checks on all employees responsible for performing work related to this project. Background checks shall be at the expense of the District and shall be performed by a qualified vendor approved by the District. In the event a background check discloses information that the District, at its sole discretion, deems unsatisfactory, Offeror agrees to immediately cease using said employee or subcontractor on work related to this Project.

**ARTICLE XIV
BONDS AND INSURANCE**

14.01. When the successful Offeror delivers the executed Agreement to the District, it must be accompanied by the required payment and performance bonds and required certificates of insurance.

**ARTICLE XV
PAYMENT AND RETAINAGE**

15.01. Payment and retainage will be made in accordance with the executed Agreement.

**ARTICLE XVI
WAGE RATES**

16.01. This project does not fall under the federal Davis Bacon Act. However, pursuant to Chapter 2258 of the Texas Government Code, Bidders will be required to pay prevailing wage rates in the locality of the project, as determined and published by the District and included in the Contract Documents.

**ARTICLE XVII
LIQUIDATED DAMAGES**

17.01. Intentionally Deleted.

PROPOSAL SUBMITTAL FORM

OFFEROR CONTACT INFORMATION:

Firm Name: _____
Contact: _____
Email: _____
Address: _____
Phone: _____

PROPOSAL TO:

Midland County Utility District
Attn: Miguel Garza
415 W. Wall Street, #1815
Midland, Texas 79701

1. BASE PROPOSAL

The undersigned, referred to as Offeror, having examined the Contract Documents and the Project site, hereby proposes to furnish labor, materials, tools, equipment, services and insurance required to complete the Work in connection with the Contract, in accordance with the Contract Documents, for the lump sum base Proposal amount of _____ (\$_____). In case of discrepancy between words and numbers, the words will govern. This stated amount constitutes the base Proposal and includes all allowances required by the Contract Documents.

2. ADDENDA

Offeror acknowledges receipt of the following addenda covering revisions to the Contract Documents and states that the costs, if any, of such revisions have been included in the Base Proposal and other prices quoted herein:

(If no addenda have been received, write in "none")

Addendum No. _____, Dated _____
Addendum No. _____, Dated _____
Addendum No. _____, Dated _____
Addendum No. _____, Dated _____

3. TIME FOR COMPLETION

Offeror agrees to complete the Work in its entirety within calendar days after the issuance date of a Notice to Proceed.

4. BREAKDOWN OF BASE PROPOSAL

Offeror shall include a Proposal breakdown and at a minimum shall address the following:

Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Amount
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____
				\$_____	\$_____

5. ATTACHMENTS TO THIS PROPOSAL

The following documents are attached to and made part of this Proposal Submittal:

- (i) Proposal Security Bid Bond Form
- (ii) Compliance to State Law on Non-Resident Offerors
- (iii) Compliance to Texas Tax Code
- (iv) Conflict of Interest Questionnaire
- (v) Offeror's Qualifications
- (vi) Non-Collusion Affidavit
- (vii) Performance Bond Form
- (viii) Payment Bond Form
- (ix) Offeror Information Form
- (x) Construction Contract with MCUD Terms and Conditions

6. LEGAL STATUS OF OFFEROR

Offeror does hereby declare that it has the following legal status: (fill out applicable legal status and strike out other two)

(i) A corporation, organized and existing under the laws of the State of _____ for whom, _____ whose signature is affixed hereto, is duly authorized to execute contracts.

(ii) A partnership, all the partners of which, with addresses are:

(iii) An individual, whose signature is affixed hereto.

7. FIRM NAME AND ADDRESS OF OFFEROR

This Proposal is submitted in the name of:

Firm Name: _____

Business Address: _____

By: _____
(Signature)

Name: _____
(Printed)

Title: _____

Signed and sealed this _____ day of _____, 2026

PROPOSAL SECURITY (BID BOND)

Bidder as Principal Name: _____ Mailing address (principal place of business): _____ 	Surety Name: _____ Mailing address (principal place of business): _____ Physical address (principal place of business): _____
Owner Name: Midland County Utility District Mailing address (principal place of business): 415 W. Wall Street, #1815 Midland, Texas 79701	Surety is a corporation organized and existing under the laws of the state of: _____ By submitting this bond, Surety affirms their authority to do business in the State of Texas and their license to execute bonds in the State of Texas.
Proposal Project name and location: _____ Proposal Due Date: _____ Contract Price Offered: _____	Telephone (main number): _____ Telephone (for notice of claim): _____ Local Agent for Surety Name: _____ Address: _____ Telephone: _____
Bond Bond Number: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Proposal Due Date)</i> Penal Sum for Bond: _____ <i>(Five Percent of the Contract Price Offered)</i>	<i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free telephone number: 1-800-252-3439</i>
<i>Surety and Bidder, intending to be legally bound by this bond, do each cause this bond to be duly executed on its behalf by its authorized officer, agent or representative. The Bidder and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if Owner accepts Bidder's Proposal and Bidder delivers the executed Agreement and the required performance and payment bonds within the time stipulated in the Contract Documents this obligation is null and void. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner. Venue shall lie exclusively in Tarrant County, Texas for any legal action.</i>	
Contractor as Principal Signature: _____ Name and Title: _____	Surety Signature: _____ Name and Title: _____ (Attach Power of Attorney)

COMPLIANCE TO STATE LAW ON NONRESIDENT BIDDERS

Chapter 2252 of the Texas Government Code applies to the award of government contract to non-resident Bidders. This law provides that:

“A government entity may not award a governmental contract to a nonresident Bidder unless the nonresident underbids the lowest Bid submitted by a responsible resident Bidder by an amount that is not less than the amount by which a resident Bidder would be required to underbid the nonresident Bidder to obtain a comparable contract in: (1) the state in which the nonresident’s principal place of business is located; or (2) a state in which the nonresident is a resident manufacturer.”

“Nonresident Bidder” refers to a person who is not a resident.

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

Check the statement that is correct for Bidder.

- ☐ Bidder qualifies as a nonresident Bidder whose principal place of business or residency is in the State of _____.
- ☐ Bidder (includes parent company or majority owner) qualifies as a resident Bidder whose principal place of business is in the State of Texas.

Determination of others states laws is based on the State of Texas Comptrollers annual publication of List of States with Resident Bidder Preferences.

Bidder:

Company Name:

(typed or printed)

By:

(signature - attach evidence of authority to sign)

Name:

(typed or printed)

Title:

Business

Phone:

Email:

COMPLIANCE TO TEXAS TAX CODE

Comply with all requirements of the Texas Tax Code Chapter 151 and rules and requirements of the Texas Comptroller of Public Accounts. The Offeror hereby certifies that the Contract Price is divided as follows:

Tax exempt products, materials and services (See Notes 1 and 2)	\$	_____
Taxable products, materials and services (See Note 3)	\$	_____
Total (Total must equal the Contract Price)	\$	_____

Bidder:

Company Name: _____
(typed or printed)

By: _____
(Signature -- attach evidence of authority to sign)

Name: _____
(typed or printed)

Title: _____
(Signature of Corporate Secretary)

Business Address: _____

Phone: _____ E-mail: _____

Notes:

1. Exempt products and materials are those items purchased for the Project which are physically incorporated into the facilities constructed for the District or are necessary and essential for the performance of the Work and are completely consumed at the Site. For purposes of this definition, products and materials are completely consumed if after being used once for its intended purpose it is used up or destroyed. Products and materials rented or leased for use in the performance of the Work cannot be completely consumed for the purposes of this definition.
2. Exempt services are those services performed at the Site where the Contract expressly requires the specific service to be provided or purchased by the person performing the Work or the service is integral to the performance of the Work.
3. Products, materials and services are not tax exempt if they are used by the Contractor but are not physically incorporated into the District's facilities or are not consumed by construction as defined above. Machinery or equipment and its accessories and repair and replacement parts used in the performance of the Work are not exempt.
4. The sum of the amount for tax exempt products, materials and services and taxable products, materials and services must equal the Contract Price.

CONFLICT OF INTEREST QUESTIONNAIRE FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY	
1 Name of vendor who has a business relationship with local governmental entity.	Date Received	
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. _____ Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 _____ Name of signatory _____ Signature _____ Date		

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

OFFEROR'S QUALIFICATIONS

Organization Doing Business As			
Business Address of Regional Office			
Name of Regional Office Manager			
Telephone Numbers			
Main Number			
Fax Number			
Web Site Address			
Organization History			
List of names that this organization currently has or anticipates operating under over the history of the organization, including the names of related companies presently doing business:			
Names of Organization	From Date	To Date	
List of companies, firms or organizations that own any part of the organization.			
Name of companies, firms or organization		Percent Ownership	
Construction Experience			
Years experience in projects similar to the proposed project:			
As a General Contractor		As a Joint Venture Partner	
Has this or a predecessor organization ever defaulted on a project or failed to complete any work awarded to it?			
If yes provide full details in a separate attachment.			
Has this or a predecessor organization been released from a bid or proposal in the past ten years?			
If yes provide full details in a separate attachment.			
Has this or a predecessor organization ever been disqualification as a Bidder or proposer by any local, state, or federal agency within the last five years?			
If yes provide full details in a separate attachment.			
Is this organization or your proposed surety currently in any litigation or contemplating litigation?			
If yes provide full details in a separate attachment.			
Has this or a predecessor organization ever refused to construct or refused to provide materials defined in the contract documents?			
If yes provide full details in a separate attachment.			

OFFEROR'S PROJECT EXPERIENCE AND RESOURCES

Organization Doing Business As				
Projects				
Provide a list of three related projects that are currently underway, or have been completed within the last five years on the next page				
Equipment				
Provide a list of major equipment proposed for use on this project. Attach Additional Information if necessary				
Equipment Item	Primary Use on Project	Own	Will Buy	Lease
Division of Work between Organization and Subcontractor				
What work will the organization complete using its own resources?				
What work does the organization propose to subcontract on this project?				
Indicators of Organization Size				
Average Number of Current Full Time Employees		Average Estimate of Revenue for the Current Year		

Project Owner				Project Name		
General Description of Project:						
Project Cost				Date Project Completed		
Key Project Personnel			Project Manager	Project Superintendent	Safety	Quality Control Manager
Name						
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)						
	Name	Title/ Position	Organization	Telephone	E-mail	
Owner						
Designer						
Construction Manager						

Project Owner				Project Name		
General Description of Project:						
Project Cost				Date Project Completed		
Key Project Personnel			Project Manager	Project Superintendent	Safety	Quality Control Manager
Name						
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)						
	Name	Title/ Position	Organization	Telephone	E-mail	
Owner						
Designer						
Construction Manager						

Project Owner				Project Name		
General Description of Project:						
Project Cost				Date Project Completed		
Key Project Personnel			Project Manager	Project Superintendent	Safety	Quality Control Manager
Name						
Reference Contact Information (listing names indicates approval to contacting the names individuals as a reference)						
	Name	Title/ Position	Organization	Telephone	E-mail	
Owner						
Designer						
Construction Manager						

NON-COLLUSION AFFIDAVIT

STATE OF TEXAS

COUNTY OF _____

OWNER: Midland County Utility District
415 W. Wall Street, #1815
Midland, Texas 797017

CONTRACT: MCUD Metal Building Administration Facility-Phase I

_____, being first duly sworn, deposes and says that:

1. He/She is _____ of _____, the Offeror that has submitted the attached Proposal;
2. He/She is fully informed respecting the preparation and contents of the attached Proposal and all pertinent circumstances respecting such Proposal;
3. Such Proposal is genuine and is not a collusive or sham Proposal;
4. Neither the said Offeror nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this Affiant, has in any way colluded, conspired, connived, or agreed directly or indirectly with any other Offeror, firm, or person to submit a collusive or sham Proposal in connection with the contract for which the attached Proposal has been submitted, or to refrain from bidding in connection with such contract, or has in any manner directly or indirectly sought by agreement, collusion, communication, or conference with any other Offeror, firm, or person to fix the price or prices in the attached Proposal or of any other Offeror, or to fix any overhead, profit, or cost element of Proposal price or the Proposal price of any other Offeror, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the District, or any person interested in the proposed contract; and
5. The price or prices quoted in the attached Proposal are fair, proper, and not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Offeror or any of its agent's representatives, owners, employees, or parties in interest, including this Affiant.

[Signature Page Follows]

Signed: _____

Title: _____

Company Name: _____
(typed or printed)

By: _____
(Signature – attached evidence of authority to sign)

Name: _____
(typed or printed)

Title: _____

Business address: _____

Phone: _____ E-mail: _____

[Signature Page – Non-Collusion Affidavit]

PERFORMANCE BOND

Contractor as Principal Name: _____ Mailing address (<i>principal place of business</i>): _____ 	Surety Name: _____ Mailing address (<i>principal place of business</i>): _____ Physical address(<i>principal place of business</i>): _____
Owner Name: Midland County Utility District Mailing address (<i>principal place of business</i>): 415 W. Wall Street, #1815 Midland, Texas 797017 	Surety is a corporation organized and existing under the laws of the state of: _____ By submitting this bond, Surety affirms their authority to do business in the State of Texas and their license to execute bonds in the State of Texas.
Contract Project name: _____ Effective Date of the Contract: _____ Contract Amount: _____ 	Telephone (<i>main number</i>): _____ Telephone (<i>for notice of claim</i>): _____
Bond Date of Bond _____ (<i>Date of Bond cannot be earlier than Effective Date of Contract</i>) Bond Amount: _____ 	Local Agent for Surety Name: _____ Address: _____ Telephone: _____ <i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free telephone number: 1-800-252-3439</i>
<i>Surety and Contractor, intending to be legally bound and obligated to Owner do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative. The Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if the Contractor as Principal faithfully performs the Work required by the Contract then this obligation shall be null and void; otherwise, the obligation is to remain in full force and effect. Provisions of the bond shall be pursuant to the terms and provisions of Chapter 2253 and Chapter 2269 of the Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. Venue shall lie exclusively in Tarrant County, Texas for any legal action.</i>	
Contractor as Principal Signature: _____ Name and _____ Title: _____ 	Surety Signature: _____ Name and _____ Title: _____ (Attach Power of Attorney)

PAYMENT BOND

Contractor as Principal Name: _____ Mailing address (<i>principal place of business</i>): _____ 	Surety Name: _____ Mailing address (<i>principal place of business</i>): _____ Physical address(<i>principal place of business</i>): _____
Owner Name: Midland County Utility District Mailing address (<i>principal place of business</i>): 415 W. Wall Street, #1815 Midland, Texas 797017 	Surety is a corporation organized and existing under the laws of the state of: _____ By submitting this bond, Surety affirms their authority to do business in the State of Texas and their license to execute bonds in the State of Texas.
Contract Project name: _____ Effective Date of the Contract: _____ Contract Amount: _____ 	Telephone (<i>main number</i>): _____ Telephone (<i>for notice of claim</i>): _____
Bond Date of Bond _____ (<i>Date of Bond cannot be earlier than Effective Date of Contract</i>) Bond Amount: _____ 	Local Agent for Surety Name: _____ Address: _____ Telephone: _____ <i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the following toll-free telephone number: 1-800-252-3439</i>
<i>Surety and Contractor, intending to be legally bound and obligated to Owner do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative. The Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if the Contractor as Principal pays all claimants providing labor or materials to him or to a Subcontractor in the prosecution of the Work required by the Contract then this obligation shall be null and void; otherwise, the obligation is to remain in full force and effect. Provisions of the bond shall be pursuant to the terms and provisions of Chapter 2253 and Chapter 2269 of the Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. Venue shall lie exclusively in Tarrant County, Texas for any legal action.</i>	
Contractor as Principal Signature: _____ Name and _____ Title: _____	Surety Signature: _____ Name and _____ Title: _____ (Attach Power of Attorney)

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT ("**Contract**") is by and between Midland County Utility District, a Texas special law district created under Section 59, Article XVI, Texas Constitution with an address at 415 W. Wall Street #1815, Midland, Texas 79701 (the "**District**"), and _____, a _____ with an address at _____ ("**Contractor**").

District and Contractor, in consideration of the mutual covenants set forth herein, hereby agree as follows:

ARTICLE I WORK

1.01. Contractor shall complete all Work as specified or indicated in the Contract Documents.

1.02. Contractor shall confine equipment, materials, and the operations of workers to the Site and shall not unreasonably encumber the Site and other areas with equipment or materials. Contractor shall assume full responsibility for any damage to any land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

1.03. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

1.04. During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

1.05. Prior to Completion of the Work, Contractor shall clean the Site and the Work and make ready for utilization by District. At the completion of the Work, Contractor shall remove from the Site all tools, appliances, equipment, machinery and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

1.06. Contractor's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work has been completed and accepted by District.

ARTICLE II THE PROJECT

2.01. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project Description: MCUD Metal Building Administrative Facility-Phase I

Project Address: 4218 S. County Road 1140, Midland, Texas 79706

2.02. District's designated representative for the Project: Miguel Garza.

2.03. District's Engineer for the Project: Miguel Garza.

2.04. District's Design and Architectural Representative: Josh Stark

ARTICLE III CONTRACT TIMES

3.01. Time of the Essence. All time limits for Milestones, if any, and Completion, acceptance and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02. Dates for Completion and Final Payment. The Work shall be completed and accepted by District within 90 days from time of receipt of Notice to Proceed.

3.03. Liquidated Damages. Intentionally Deleted.

ARTICLE IV CONTRACT PRICE

4.01. District shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount not to exceed \$___N/A____.

ARTICLE V PAYMENT PROCEDURES

5.01. Contractor will submit invoices in accordance with Section 6 of the Attachment "A" MCUD Terms and Conditions.

CONTRACTOR'S REPRESENTATIONS

5.02. Contractor makes the following representations:

- a.** Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Contract Documents.
- b.** Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

- c. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- d. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Contract Documents.
- e. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents, and safety precautions and programs incident thereto.
- f. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- g. Contractor is aware of the general nature of Work to be performed by District and others at the Site that relates to the Work as indicated in the Contract Documents.
- h. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- i. Contractor has given District written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by District is acceptable to Contractor.
- j. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- k. Contractor has the power and authority to enter into this Contract. The execution and delivery of this Contract and the performance of the Work hereunder has been duly authorized by all necessary corporate action.

Upon execution, this Contract will constitute the binding and valid obligations of the Contractor enforceable in accordance with its terms. Contractor is in good standing in and qualified to do business in the State of Texas.

ARTICLE VI CONTRACT DOCUMENTS

6.01. Contents.

- a.** The Contract Documents consist of the following:
 - i.** This Contract for Construction Project
 - ii.** Attachment “A” MCUD Terms and Conditions for Construction Project, attached hereto and incorporated herein for all purposes.
 - iii.** Phase I Technical Specifications dated June 15, 2026 (v1.1 revision 06/30/26)
 - iv.** STARK Design Studio Plan Drawings dated June 14, 2026
- b.** The following are also Contract Documents which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - i.** Payment Bond
 - ii.** Performance Bond
 - iii.** Certificate of Insurance
 - iv.** Form 1295 Certificate of Interested Parties
 - v.** Notice to Proceed
 - vi.** Written Amendment(s)
 - vii.** Change Order(s)
 - viii.** Field Order(s)
 - ix.** Change Directive(s)
- c.** The documents listed in **Paragraph 6.01.A** are attached to this Contract (except as expressly noted otherwise above).
- d.** The following documents are not Contract Documents and are provided for information only:
 - i.** _____N/A_____.

- e. The Contract Documents may only amended, modified, or supplemented by a Contract Amendment, Change Order, Field Order or Change Directive.

ARTICLE VII WAGE RATE REQUIREMENTS

7.01. This project does not fall under the federal Davis-Bacon Act. However, pursuant to Texas Government Code Chapter 2258 and Texas Water Code Section 49.279, contractors are required to pay not less than the prevailing wage rates in the locality in which the work is performed, as determined and published by the District and included in the Contract Documents. Contractor is responsible for obtaining all applicable wage rates from either <http://www.beta.SAM.gov> or the municipality or county as set forth in Texas Water Code Section 49.279.

7.02. In accordance with Texas Government Code Section 2258.024, Contractor and its subcontractors, if any, shall keep a record showing:

- a. The name and occupation of each worker employed by the Contractor or subcontractor in the construction of the Work; and
- b. The actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by the officers and agents of District.

7.03. A contractor or subcontractor who violates the requirements of Texas Government Code Chapter 2258 shall pay to District \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated by the Contract.

ARTICLE VIII MISCELLANEOUS

8.01. Execution. This Contract may be executed in one or more counterparts and may be exchanged by email or other electronic means. It is stipulated and agreed that any counterpart containing a signature or digital signature of the authorized representatives of District and Contractor shall be deemed an original for all purposes.

8.02. Contractor Certifications.

- a. Prohibition on Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations
 - i. Texas Government Code Chapter 2252, Subchapter F, prohibits the award of governmental contracts to companies engaged in business with Iran, Sudan, or foreign terrorist organizations.
 - ii. By signing this Contract, Contractor certifies that it, and its Subcontractors and Suppliers, are eligible to be awarded this Contract under Chapter 2252, Subchapter F.

- b. Prohibition on Contracts with Certain Companies that Boycott Israel
 - i. Texas Government Code Chapter 2271 prohibits the award of governmental contracts to companies boycotting Israel.
 - ii. By signing this Contract, Contractor certifies that it, and its Subcontractors and Suppliers, do not boycott Israel and will not boycott Israel during the term of this Contract.
- c. Prohibition on Contracts with Companies that Boycott Energy Companies
 - i. Texas Government Code Chapter 2276 prohibits the award of governmental contracts to companies boycotting energy companies.
 - ii. By signing this Contract, Contractor certifies that it, and its Subcontractors and Suppliers, do not boycott energy companies and will not boycott energy companies during the term of this Contract.
- d. Prohibition on Contracts with Companies that have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. **[NOTE: Required only if Engineer has 10 or more full-time employees and the Services have a value of at least \$100,00 that is paid wholly or partly from public funds of the District.]**
 - i. Texas Government Code Chapter 2274 prohibits the award of governmental contracts to companies that have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association.
 - ii. By signing this Contract, Contractor certifies that it, and its Subcontractors and Suppliers, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and that it will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Contract.
- e. Workers' Compensation Insurance.
 - i. By signing this Contract, Contractor certifies that it, and its Subcontractors and Suppliers, provide workers' compensation insurance coverage for all employees employed on this Project pursuant to Texas Labor Code Section 406.096(a).
 - ii. As required by Texas Labor Code Section 406.096(b), Contractor must require each Subcontractor to certify in writing to the Contractor that it and its Subcontractors provide workers' compensation insurance coverage for all of the employees it employs on this Project. Contractor must provide these certifications to the Owner within 10 days of the Effective Date of the Contract.

- f.** Certificate of Interested Parties.
- i.** Contractor must complete and submit a Certificate of Interested Parties (Form 1295) to the District with the signed Contract as required by Texas Government Code Section 2252.908. Failure to include Form 1295 with return of the contracts will result in the contracts not being awarded. Frequently Asked Questions (FAQs) for Form 1295 can be found on the Texas Ethics Commission web page: https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.htm
 - ii.** Definition of “Interested Party” can be found on Texas Ethics Commission Rules and Definitions website: https://www.ethics.state.tx.us/tec/1295_Info.htm
 - iii.** Contractor will be required to complete Form 1295 Certificate of Interested Parties before the Agreement can be signed by the District. The District will assign the identification number for this project and provide it with a link to the Texas Ethics Commission Website for filing the Certificate in the Notice of Award.
 - iv.** This Certificate of Interested Parties will also apply to change orders and contract amendments.

[Signature Page Follows]

IN WITNESS WHEREOF, District and Contractor have signed this Contract. Counterparts have been delivered to District and Contractor. All portions of the Contract Documents have been signed or have been identified by District and Contractor or on their behalf.

This Contract will be effective on , 2026 (which is the Effective Date of the Contract).

DISTRICT:

Midland County Utility District,
a Texas special law district created under
Section 59, Article XVI, Texas Constitution

By:_____

Name:_____

Title:_____

CONTRACTOR:

_____,
a _____

By:_____

Name:_____

Title:_____

[Signature Page – Construction Contract]

ATTACHMENT “A”

TO CONSTRUCTION CONTRACT

MCUD TERMS AND CONDITIONS FOR CONSTRUCTION PROJECT

1. DEFINITIONS

- (a)** Change Order—A document issued on or after the Effective Date of the Agreement and signed by District and Contractor which modifies the Work, Contract Price, Contract Times, or terms and conditions of the Contract.
- (b)** Completion—The date at which the Work is completed as calculated in **Paragraph 3.02** of the Contract.
- (c)** Contract—The entire and integrated written agreement between the District and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- (d)** Contract Documents—Those items so designated in the Contract. Only printed or hard copies of the items listed in the Contract are Contract Documents. Other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
- (e)** Contract Price—The moneys payable by District to Contractor for completion of the Work in accordance with the Contract Documents as stated in Paragraph 4.01 of the Contract.
- (f)** Contract Times—The number of days or the dates stated in the Contract to: (i) achieve Milestones, if any; (ii) achieve Completion; and (iii) complete the Work so that it is ready for final payment.
- (g)** Entire Agreement—District and Contractor agree that there are no oral agreements, understandings, representations, or warranties which are not expressly set forth herein.
- (h)** Field Order— A document issued by District requiring changes in the Work that do not change the Contract Price or the Contract Times.
- (i)** Milestone—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Completion of all the Work.
- (j)** Notice to Proceed—A written notice given by District to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
- (k)** Site—Lands or areas indicated in the Contract Documents as being furnished by District upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by District which are designated for the use of Contractor.

- (l) Underground Facilities—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- (m) Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract and any and all Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

2. INDEPENDENT CONTRACTOR

The Contractor shall operate hereunder as an independent contractor and not as an officer, agent, or employee of District. Contractor shall have exclusive control of, and the exclusive right to control, the details of its operations hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

3. ASSIGNMENT

No assignment by Contractor of any rights under or interests in the Contract will be binding on District without the prior written consent of the District; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the Contractor from any duty or responsibility under the Contract Documents. District and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

4. SEVERABILITY

Any provision or part of the Contract held to be void or unenforceable under any Laws and Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon District and Contractor, who agree that the Contract shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Contract may be waived without consent of the parties. Forbearance or indulgence by any party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

6. INVOICE REQUIREMENTS

- (a)** Invoice must include, at a minimum, the following information:
 - (i)** Project Description and Location
 - (ii)** Company Name
 - (iii)** Unit cost
 - (iv)** Total Line Cost
 - (v)** Date Work began and completed for each payment request
- (b)** Invoices shall be submitted to:

Midland County Utility District
415 W. Wall Street #1815
Midland, Texas 79701
- (c)** No payment will be made for goods ordered or Work performed without a proper invoice.
- (d)** Payment shall not be made until the materials, goods, or Work have been received, inspected, and accepted by the District in the quality and quantity ordered.
- (e)** Invoices resulting from scheduled goods or Work shall be received no less than thirty (30) days apart.
- (f)** The District will:
 - (i)** Not accept an incorrect invoice.
 - (ii)** Incur no penalty for late payment if payment is made in thirty (30) days or less from receipt of goods/Work and/or a correct/accurate invoice, whichever is later in accordance with Chapter 2251, Texas Government Code (the "Texas Prompt Payment Act").

7. PAYMENT TERMS

All payment terms shall be Net 30, and payments shall be made on approved invoices in accordance with the Texas Government Code Chapter 2251.

8. TAXES

The District generally qualifies as a tax exempt agency as defined by the statutes of the State of Texas and is usually not subject to any city or state sales or use taxes. Contractor assumes responsibility for including any applicable sales taxes in the Contract Price. Contractor affirms that the Contract Price includes all applicable sales and/or use taxes. Further, Contractor shall include on each invoice submitted hereunder (i) the amount of any applicable sales and/or use tax and (ii) a statement on said invoice verifying that the amount

submitted for payment includes the stated and applicable sales and/or use tax. Contractor hereby agrees to provide the District copies of any audits by the State of Texas Comptroller of Contractor's payment of sales taxes applicable to transactions under this Contract. Further, Contractor, in consideration of the rights, duties and obligations contained herein, hereby waives confidentiality of audits conducted by the State of Texas Comptroller pertaining to transactions under this Contract and authorizes the State of Texas Comptroller, upon request of the District, to release to the District copies of Contractor's audits pertaining to transactions under this Contract. IN ADDITION TO OTHER INDEMNITIES CONTAINED HEREIN, CONTRACTOR SHALL INDEMNIFY, RELEASE AND HOLD HARMLESS THE DISTRICT FROM ALL COST, LOSS OR EXPENSE ARISING FROM CONTRACTOR'S FAILURE TO (I) INCLUDE THE SALES AND/OR USE TAXES IN THE STATED CONTRACT PRICE, (II) SEPARATELY STATE THE SALES AND/OR USE TAXES ON INVOICES, AND/OR (III) PROVIDE WRITTEN VERIFICATION ON INVOICES THAT THE SALES TAX IS INCLUDED IN THE CONTRACT PRICE.

9. FUNDING

The District's fiscal year starts on October 1st and ends on September 30th. Contractor recognizes that the continuation of any contract after the close of any given fiscal year will be subject to the District approval. Should the funding not be approved, this Contract will terminate and become null and void.

10. PROJECT LOCATION

4218 S. County Road 1140, Midland, Texas 79706

11. CONTRACTOR'S WARRANTY OF TITLE

Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any invoice, whether incorporated in the Project or not, will pass to District no later than the time of payment free and clear of all liens.

12. NEW MATERIALS

Except as to any supplies or components which the specifications provide need not be new, all supplies and components to be provided under this Contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production, and of the most suitable grade for the purpose intended.

13. TITLE AND RISK OF LOSS

The title and risk of loss of goods shall not pass to the District until the District actually receives and takes possession of the goods at the point(s) of delivery, after inspection and acceptance of goods.

14. FORCE MAJEURE

Contractor shall not be liable for delay in delivery or performance when such delay is due to factors beyond its control, including but not limited to, explosions, governmental regulations, court orders or decrees, or acts of nature such as flood, wind, earthquake, tornado or hurricane. If the Contractor is unable to perform any of its obligations as a result of force

majeure, Contractor shall immediately give written notice to the Purchasing Department of the date of inception of the force majeure condition and the extent to which it will affect performance.

15. RIGHT OF INSPECTION

District shall have the right to inspect the quality and quantity of Work before accepting. Contractor shall be responsible for all charges for the return to Contractor of any Work rejected as being nonconforming under the Contract Documents. It is the intent of the parties that Contractor shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, services or other Work, without additional cost to the District. The acceptance of Contractor's Work by the District shall not relieve Contractor from the obligation to correct subsequently discovered defects, inaccuracies or incompleteness resulting from Contractor's acts, errors or omissions. In no event shall this Paragraph 15 be construed to relieve Contractor from liability for any Work which is not approved by the District.

16. RIGHT TO AUDIT

Contractor agrees that the District shall, until the expiration of four (4) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Contract. Contractor agrees that the District shall have access, during normal working hours, to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. The District shall give Contractor reasonable advance notice of intended audits.

17. WARRANTY SERVICE CLAUSE

Under the terms of the warranties which arise from these Contract Documents and/or by the terms of any applicable special warranties required by the Contract Documents, if any of the Work in accordance with this Contract is found to not be in accordance with the requirements of the Contract Documents, the Contractor shall correct such Work promptly after receipt of written notice from the District or the architect, engineer or other. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract. In order to facilitate a prompt response, Contractor agrees to provide for warranty service to the extent practical, from local businesses, including goods and Work, when such goods and Work are comparable in availability, quality and price. If Contractor fails within a reasonable time after written notice to correct defective Work or to remove and replace rejected Work, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any provision in the Contract Documents, either the District or its designee may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency at the Contractor's expense.

18. OWNERSHIP OF WORK PRODUCT

Contractor agrees that any and all analyses, evaluations, reports, memoranda, letters, ideas, processes, methods, programs, and manuals that were developed, prepared, conceived, made or suggested by the Contractor for the District pursuant to a Work order, including all such developments as are originated or conceived during the term of the Contract and that are completed or reduced to writing thereafter are Work Product (the "Work Product") and Contractor acknowledges that such Work Product may be considered "work(s) made for hire"

and will be and remain the exclusive property of the District. To the extent that the Work Product, under applicable law, may not be considered work(s) made for hire, Contractor hereby agrees that this Contract effectively transfers, grants, conveys, and assigns exclusively to the District, all rights, title and ownership interests, including copyright, which Contractor may have in any Work Product or any tangible media embodying such Work Product, without the necessity of any further consideration, and the District shall be entitled to obtain and hold in its own name, all Intellectual Property rights in and to the Work Product. Contractor for itself and on behalf of its vendors hereby waives any property interest in such Work Product.

19. INDEMNIFICATION

TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS EACH DISTRICT INDEMNIFIED PARTY FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, DAMAGES AND EXPENSE (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE WORK, BODILY INJURY, DEATH, OR DESTRUCTION OF TANGIBLE PROPERTY CAUSED BY ANY ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED OR RETAINED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER SUCH CLAIM, COST, LOSS, DAMAGE OR EXPENSE IS ALLEGED TO BE CAUSED IN PART BY A DISTRICT INDEMNIFIED PARTY HEREUNDER, SUBJECT TO THE DISTRICT'S DEFENSES AND LIABILITY LIMITS UNDER THE TEXAS TORT CLAIMS ACT. NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY A DISTRICT INDEMNIFIED PARTY AGAINST A CLAIM, COST, LOSS, DAMAGE OR EXPENSE CAUSED BY THE (I) NEGLIGENCE OR FAULT, (II) BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE, OR (III) THE BREACH OF CONTRACT BY A DISTRICT INDEMNIFIED PARTY. PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, CONTRACTOR INDEMNIFIES EACH OF THE DISTRICT INDEMNIFIED PARTIES AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR, ITS AGENTS OR SUBCONTRACTORS OF ANY TIER EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF A DISTRICT INDEMNIFIED PARTY.

20. TERMINATION FOR DEFAULT

The District reserves the right to terminate the Contract without prior notice in the event the Contractor defaults or breaches any of the terms and conditions of this Contract. In the event of termination, the District reserves the right to complete the Work or services in any manner it deems desirable, including engaging the services of other parties. Any such act by the District shall not be deemed a waiver of any other right or remedy of District. If after exercising any such remedy, the cost to the District of the performance of the balance of the Work or services is in excess of that part of the Contract sum, which has not therefore been paid to the Contractor hereunder, Contractor shall be liable for and shall reimburse the District for such excess and liquidated damages, if any.

21. TERMINATION WITHOUT CAUSE

The District shall have the right to terminate the Contract, in whole or in part, without cause at any time upon thirty (30) days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease placing orders and all further Work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The District shall pay the Contractor, to the extent funds are appropriated or otherwise legally available for such purposes, for all goods delivered and Work performed and obligations incurred prior to the date of termination in accordance with the terms hereof, less liquidated damages, if any.

22. NO THIRD-PARTY BENEFICIARY

For purposes of this Contract, including its intended operation and effect, the parties to this Contract specifically agree that: (1) the Contract only affects matters/disputes between the parties to this Contract, 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 entity may be in a contractual relationship with District or Contractor or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either District or Contractor.

23. BANKRUPTCY OR INSOLVENCY

If the Contractor shall file a petition in bankruptcy, or if the same shall be adjudged bankrupt or insolvent by any Court, or if a receiver of the property of the Contractor shall be appointed in any proceeding brought by or against the Contractor's creditors, or proceedings shall be commenced on or against the Contractor's operations of the premises, the District reserves the right to terminate this Contract immediately.

24. MISCONDUCT

The District is committed to maintaining an alcohol, drug, tobacco and firearm free workplace. Possession or use of firearms, or possession, use of, or being under the influence of alcohol or controlled substances by Contractor's employees or subcontractors' employees while in the performance of any service(s) or delivery of goods to the District is strictly prohibited. Violation of this requirement may constitute grounds for immediate cancellation of the Contract. The District reserves the sole right to determine whether this clause is violated, which may be grounds for immediate termination.

25. COMPLIANCE WITH LAWS AND REGULATIONS

Contractor agrees to give all notices and comply with all federal, state and local laws, statutes, ordinances, safety codes, rules and regulations (collectively "Laws and Regulations") in any matter bearing on the performances of the Work specified herein. The Contractor warrants to the District that all Work will be performed in compliance with all applicable Laws and Regulations.

26. BONDS AND INSURANCE

(a) Performance, Payment, and Other Bonds

- (i)** Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one (1) year after the date when final payment becomes due. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- (ii)** If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of the terms and conditions specified herein, Contractor shall promptly notify the District, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements specified herein.

(b) Licensed Sureties and Insurers

- (i)** All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Contract Documents. Such bonds and insurance shall not require District to execute additional documentation to be effective.
- (ii)** Insurance companies providing insurance required by Contract Documents shall have a minimum rating of A FSC of Class VIII according to A.M. Best Company.

(c) Evidence of Insurance

- (i)** At least three (3) weeks prior to commencement of Work and at renewals thereafter during the Term of this Contract, and for one (1) year thereafter, Contractor shall deliver to the District, with copies to each additional insured, certificates of insurance (and other evidence of insurance requested by the District or any other additional insured, including, but not limited to, copies of any applicable policies) which Contractor is required to purchase and maintain under the Contract Documents. Each certificate of insurance must be submitted on a standard ACCORD form and shall contain in the "Description/Location" field, the Project Name or description of work as specified by the District. Such certificates or other evidence of insurance shall be submitted to: Midland County Utility District, 415 W. Wall Street #1815, Midland, Texas 79701.

- (ii) All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws and Regulations, and shall be in full compliance with Texas Government Code Section 2253.021 and Texas Insurance Code Chapter 3503. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- (iii) Failure of the District to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of District to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. The acceptance of evidence of insurance by District that in any respect does not comply with the requirements of this Agreement shall not release Contractor from compliance herewith.

(d) Contractor's Insurance

- (i) Contractor will, at its sole cost and expense, maintain in effect during the term of its access to the Site and thereafter as indicated below, the following insurance policies with acceptable carriers a minimum rating of A FSC Class of VIII by AM Best Co. and on forms generally accepted in the industry:

(e) Coverages

- (i) General Liability insurance:

\$1,000,000 Each Occurrence
\$2,000,000 General aggregate
- (ii) Automobile Liability insurance to include coverage for Bodily Injury and Property Damage with a Combined Single Limit of \$500,000 each occurrence or equivalent. Coverage is to be included for Owned, Hired and Non-Owned Vehicles accessing District's property.
- (iii) Worker's Compensation insurance in the limits provided by statute or \$1,000,000.

(f) Additional Provisions

- (i) Coverages will be maintained as required for the duration of the Project and for a period of one (1) year thereafter.
- (ii) Contractor hereby waives, and all required policies shall be endorsed to provide a waiver, of any and all rights of subrogation in favor of District, the owner of the Site (if different than District) and their respective subsidiaries, officers, directors and employees.

- (iii) All required policies, except Worker's Compensation, shall be endorsed to include District, the owner of the Site (if different than District), as additional insureds and that coverage so provided shall be on a primary, non-contributory basis to any similar coverage of the District, the owner of the Site (if different than District).
- (iv) No policy shall have, in aggregate, a deductible and/or self-insured retention in excess of a reasonable amount as determined by District.
- (v) All policies are to be endorsed to provide that District and the owner of the Site (if different than District) will be provided thirty (30) days written notice prior to any material change in the policy or cancellation/non-renewal of the policy.
- (vi) Prior to its access to the Site, Contractor agrees to provide District and the owner of the Site (if different than District) with a Certificate of Insurance which shall include the required policies with limits described above as well as the requirements for waiver of subrogation, additional insured status on a primary, non-contributory basis and the thirty (30) day notice of cancellation, non-renewal or material change. Upon request of District, Contractor shall furnish to District the specific policies or policy provisions applicable to the coverages required in the Contract Documents.
- (vii) Contractor agrees to provide District and the owner of the Site (if different than District) with a replacement Certificate of Insurance for any policy expiring during the period in which Contractor or its representatives seek access to the Site.
- (viii) District shall not be responsible for purchasing and maintaining any insurance specified to protect the interests of Contractor, Subcontractors, or others in the Work. The stated limits of insurance required are minimums only. Contractor shall determine the limits that are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, Contractor is fully responsible for all losses arising out of, or resulting from or connected with Work under this Agreement, whether or not said losses are covered by insurance.
- (ix) At any time, District may request Contractor, at District's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified above. If so requested by District, and if commercially available, Contractor shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by District, and this Agreement will be supplemented to incorporate these requirements.
- (x) If Contractor does not carry adequate limits in their specific liability policies (GL and Auto), it is acceptable for them to carry a follow form Excess or Umbrella Liability policy to make up the difference.

- (xi) For projects involving harmful chemicals, a Pollution Liability Policy is required with limits of at least \$1,000,000. Remediation projects require a Pollution Liability Policy of at least \$5,000,000.
- (xii) If a permanent structure is being built, a Builder's Risk Policy is required.
- (xiii) Texas Administrative Code Title 28 Section 110.110(c)(7) requires the following language to be contained in certain building and construction specifications and contracts:

"Workers Compensation Insurance Coverage -

A. Definitions:

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

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

Persons providing services on the project ("subcontractor" in 406.096) – Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

- C. *The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. *If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. *The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*
 - (1) *A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
 - (2) *No later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*
- F. *The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. *The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.*
- H. *The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*
- I. *The contractor shall contractually require each person with whom it contracts to provide services on a project, to:*
 - (1) *Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*

- (2) *Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
- (3) *Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (4) *Obtain from each other person with whom it contracts, and provide to the contractor:*
 - (a) *A certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) *A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (5) *Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
- (6) *Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
- (7) *Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.*

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

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

27. BACKGROUND CHECK

In addition, upon request of the District, Contractor shall perform background checks on all employees responsible for performing Work related to this Project. Background checks shall be at the expense of the District and shall be performed by a qualified Contractor approved by the District. In the event a background check discloses information that the District, at its sole discretion, deems unsatisfactory, Contractor agrees to immediately cease using said employee or subcontractor on Work related to this Project.

28. STANDARD OF PERFORMANCE

Contractor agrees to provide the Work in a good, professional, and workmanlike manner, recognizing that time is of the essence to the Work. Contractor agrees to file all necessary registrations and reports with all applicable regulatory authorities which may be required in the course of providing Work. Contractor further agrees to provide Work in a manner which complies with all applicable Laws and Regulations. The District agrees to cooperate with Contractor by providing information in its possession, staff access, and such other and further resources reasonably available to it as may be necessary to facilitate the timely and proper rendition of Work.

29. NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Contract shall be deemed or construed to waive or limit the District's sovereign immunity or otherwise invalidate its immunity from suit and/or liability.

30. NON-DISCRIMINATION

Contractor shall not discriminate against any employee or applicant for employment of Contractor or of the District because of race, age, color, religion, sex, national origin, ancestry, disability, or place of birth. Contractor shall take action to ensure that all persons are employed and/or treated without regard to their race, age, color, religion, sex, national origin, ancestry, disability, or place of birth. This action shall include, but not be limited to the following: employment, promotion, demotion, transfer, working conditions, recruitment, layoff, termination, rates of pay or other forms of compensation, and training opportunities.

31. DISABILITY

In accordance with the provisions of the Americans with Disabilities Act of 1990 (ADA), Contractor warrants that it and any and all of its subcontractors will not unlawfully discriminate on the basis of disability in the provision of services to general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or employees of Contractor or any of its subcontractors. Contractor warrants it will fully comply with ADA's provisions and any other applicable federal, state and local Laws and Regulations concerning disability and will defend, indemnify and hold District harmless against any

claims or allegations asserted by third parties or subcontractors against District arising out of Contractor's and/or its subcontractor's alleged failure to comply with Laws and Regulations concerning disability discrimination in the performance of this Contract.

32. HEADINGS

The headings of this Contract are for convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

33. CONFLICTS

In the event of a conflict between the Agreement or these Standard Terms and Conditions, and the terms of any Contractor issued terms, conditions, scope of work, or other Contractor issued documents, the terms of the Agreement or these Standard Terms and Conditions shall govern.

34. GIVING NOTICE

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

- (a) delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
- (b) delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

35. COMPUTATION OF TIMES

When any period of time is referred to in the Contract Document is by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

36. SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the Work of Contractor.

37. ACCRUAL OF CLAIMS

To the fullest extent permitted by law, all causes of action arising under this Contract shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Completion.

38. WAIVER

A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

39. NON-EXCLUSIVITY

Contractor acknowledges and agrees that this Contract constitutes a non-exclusive agreement for the provision of the Work to District. Contractor further acknowledges and agrees that the District has not made any representations that Contractor will be the sole or exclusive provider of the Work to the District during the course of the Project. Due to the extensiveness and complexity of the Project, the District, in its sole and absolute discretion, reserves the right to award multiple contracts for the provision of the Work.

40. CONFLICTS OF INTEREST

Neither Contractor, nor any consultant, shall have other interests which conflict with the interests of the District, specifically including, but not limited to, a connection with the sale or promotion of equipment or material which may be used on the project. Contractor agrees to make reasonable inquiry of all subcontractors concerning the existence of or potential for such conflicts. Contractor shall comply with the provisions of Texas Local Government Code Chapter 176.

41. APPLICABLE LAW/VENUE

This Contract is entered into subject to the Charter and ordinances of the District, as they may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas, without regard to its choice-of-law rules, and federal laws. The parties to this Contract agree and covenant that for all purposes, including performance and execution that this Contract will be enforceable in Midland, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Midland County, Texas.

42. CONTRACT CLOSE-OUT

Contractor shall provide the following with its final invoice for payment: in the form provided by the District

- (a) Consent of Surety to Final Payment acknowledging unsettled disputes;
- (b) Affidavit of Payment of Debts and Claims or Affidavit of Release of Liens or furnish receipts or releases in full from subcontractors and suppliers;
- (c) Applicable warranties or service agreements; and
- (d) Evidence of insurance as required under **Paragraph 26** above.