

## **AGREEMENT FOR HVAC PROJECT**

THIS AGREEMENT is entered into by and between **Washington County School District 89-0024**, also known as **Arlington Public Schools** ("District"), and **Getzschman Heating, LLC** ("Contractor").

In consideration of mutual covenants, the parties agree as follows:

- 1. Scope of the Contract.** The Contractor shall provide to the District the goods and/or services as defined in **Exhibit A** which is attached hereto and incorporated herein by this reference.
- 2. Payment Terms/Payment Schedule.** The District shall pay for services rendered and for accepted goods on the terms and payment schedule as set forth in **Exhibit B** which is attached hereto and incorporated herein by this reference.
- 3. Time.**
  - A. Contract Time Defined. The "Contract Time" shall commence on the date of this Agreement. The goal is for the Contract Time to end **on September 1, 2017**, but the parties agree that the Contract Time shall end with respect to all work under this Agreement on **December 31, 2017**.
  - B. Time of the Essence. Contractor acknowledges that time is of the essence under this Agreement and agrees to timely perform its obligations and cause any subcontractors and materialmen to timely perform so that the Scope of the Contract may be completed within the Contract Time. By executing this Agreement, Contractor confirms the Contract Time constitutes reasonable time periods to complete the Scope of the Contract. Contractor acknowledges that the District will suffer financial loss if the Project is not completed by the Contract Time and also recognizes the delays, expenses and difficulties involved in proving actual loss suffered by the District if the Scope of the Contract is not completed by the Contract Time and as such, will make every effort to meet the time frames identified elsewhere in this Agreement.
  - C. Extensions. An extension of time for any delay shall be granted only upon written consent by District after a written claim is made by Contractor to District within 72 hours after the occurrence causing such delay. Except for the suspension by District for convenience, Contractor shall not be entitled to any increase in the price or to damages or additional compensation as a consequence of such delay.
- 4. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Washington County, Nebraska.
- 5. Termination.**
  - A. The District may terminate this Agreement in whole or part if funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the good and/or services in the indicated quantities or term. The District shall notify the Contractor as soon as

practicable if funds to meet the District's obligations become unavailable. The determination of the District as to the insufficiency of funds is conclusive.

- B. Each party may terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within 30 days after receipt of written notice of such default or such additional cure period as the nondefaulting party may authorize in writing.
- C. Each party may terminate this Agreement by written notice if federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- D. The District may terminate this Agreement, in whole or in part, by written notice to the Contractor and may regard the Contractor in default of this Agreement if the Contractor becomes:
  - (1) Insolvent;
  - (2) Makes a general assignment for the benefit of creditors;
  - (3) Files a voluntary petition of bankruptcy;
  - (4) Suffers or permits the appointment of a receiver for its business or assets;
  - (5) Becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or
  - (6) Has wound up or liquidated, voluntarily or otherwise.
- E. The District may terminate this Agreement, in whole or in part, immediately, without notice, if the Contractor is debarred or suspended from performing services on any public contracts.
- F. The parties may terminate this Agreement without cause by mutual written consent.
- G. Upon the termination for any reason or expiration of this Agreement, the Contractor promptly must return to the District all papers, materials and other property of the District then in its possession, including but not limited to all work in progress as is appropriate in its then existing form to the District.

## **6. Indemnification.**

- A. The Contractor hereby waives and agrees to indemnify and save harmless the District and its officials, agents, employees, and volunteers (hereinafter collectively referred to as "Indemnities"), against any and all claims of injuries, death, damage to property, liabilities, judgments, costs and expenses which may otherwise accrue against Indemnities in consequence of the granting of this Agreement or which may otherwise result therefrom.
- B. The Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith.
- C. If any judgment shall be rendered against the District in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same.

- D. Any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.
- E. The Contractor's obligation to indemnify and save harmless any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.

**7. Insurance.** Contractor shall secure and keep in force during the term of this Agreement the following insurance coverages from insurance companies or government self-insurance pools authorized to do business in Nebraska:

- A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per person and \$5,000,000 per occurrence.
- B. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$1,000,000 per person and \$5,000,000 per occurrence.
- C. Employers' Liability Insurance with minimum liability limits of \$1,000,000 per person and \$5,000,000 per occurrence.
- D. Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible is subject to approval by the District.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage Less than an "A-" rating must be approved by the District. The policies shall be in form and terms approved by the District.
- 3) The insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned District representative.
- 4) The Contractor shall furnish a certificate of insurance to the undersigned District representative prior to commencement of this Agreement.
- 5) Failure to provide insurance as required in this agreement is a material breach of contract entitling the District to terminate this Agreement immediately.

The District shall obtain and maintain a standard policy of builder's risk insurance during the construction period with a minimum coverage limit equal to the full cost of replacement at the time of loss.

**8. Contractor Bonds.** To secure the faithful performance of the Work and to satisfy all of Contractor's payment obligations arising hereunder, Contractor shall provide a payment bond in an amount not less than 100% of the Contract Sum through a corporate surety company, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental

which is actually used or rented in the performance of the Contract. The Contractor shall provide a performance bond in an amount not less than 100% of the Contract Sum through a corporate surety company.

- 9. Public Records.** The Contractor acknowledges that the District must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.
- 10. Publicity.** The District does not endorse the goods or services of the Contractor. Except for listing the District as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of the District.
- 11. Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all Subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on school premises or at school related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on school property or at school related functions. The Contractor and all subcontractors, if any, also shall adhere to all District's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach. The District may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.
- 12. Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
- 13. Independent Contractor.** Contractor is an independent contractor under this contract and is not a District employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 14. Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
- 15. Fair Labor Standards.** Pursuant to NEB. REV. STAT. § 73-102, Contractor certifies that it is complying with, and will continue complying with, fair labor standards in the pursuit of its business and in the execution of this Agreement. For the purposes of this section, fair labor standards means a scale of wages and conditions of employment

as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the Contractor.

- 16. Unemployment Compensation.** The Contractor shall pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of the Contract as required by NEB. REV. STAT. § 48-657.
- 17. Injury or Damage.** If any party or person suffers physical injury or property damage which arises from or relates to the performance of the Work, any party which knows of such injury or damage shall immediately give written notice of such injury or damage to all other parties. The notice shall provide sufficient detail to enable the other parties to investigate the matter.
- 18. Taxpayer Identification.** Contractor's federal employer identification number is: 47-0554011.
- 19. Sales Tax.** The District is exempt from sales tax and shall not pay any sales tax under this Agreement. The District will provide the Contractor with applicable sales tax exemption certificates upon written request.
- 20. Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

District:           Arlington Public Schools  
                          Attn: Superintendent  
                          705 N. 9<sup>th</sup>  
                          Arlington, NE 68002

With copy to:

Steve Williams, Legal Counsel  
KSB School Law, PC, LLO  
Cornhusker Plaza  
301 South 13th Street, Suite 210  
Lincoln, NE 68508

Contractor:       Getzschman Heating, LLC  
                          Attn: David Getzschman  
                          1700 East 23<sup>rd</sup> Avenue North  
                          Fremont, NE 68025

Notice is effective only if the party giving the Notice has complied with this section.

- 21. Entire Agreement.** The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

- 22. Order of Preference.** In the case of any inconsistency or conflict among the specific provisions of this Agreement (including any amendments accepted by both the District and the Contractor attached hereto), the ITB (including any subsequent addenda) (Exhibit C), and Contractor's Bid (Exhibit D), any inconsistency or conflict shall be resolved as follows:
- A. First, by giving preference to the specific provisions of this Agreement, any accepted amendments, Exhibit A and Exhibit B;
  - B. Second, by giving preference to the specific provisions of the ITB, Exhibit C;
  - C. Third, by giving preference to the specific provisions of Contractor's Bid, Exhibit D, except that objections or amendments by a Contractor that have not been explicitly accepted by the District in writing shall not be included in this Agreement and shall be given no weight or consideration.
- 23. Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.
- 24. Waivers.**
- A. The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced.
  - B. No failure or delay:
    - (1) In exercising any right or remedy, **or**
    - (2) In requiring the satisfaction of any condition under this Agreement, **and**
    - (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition.
  - C. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.
- 25. Severability.** If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.
- 26. Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.
- 27. Force Majeure.** Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non performing party's failure to perform, or delay in performing, any of its obligations contained in this contract (except any obligations to make payments for services rendered or accepted goods

received before the failure to perform or the delay in performance), where, in the opinion of the District, such failure or delay is caused by circumstances beyond the non-performing party's control or which make performance commercially impracticable, including but not limited to fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, government regulations or restrictions of any kind or any acts of any government, alien enemy, judicial action, power failure, acts of God, or other natural circumstances. This Force Majeure provision excludes economic hardship, changes in market conditions, and insufficiency of funds on the part of Contractor.

- 28. Assignment.** This Agreement binds the parties and their respective successors and assignees. The Contractor shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of the District.
- 29. Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the District.
- 30. Third Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the signatories.
- 31. Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
- 32. Rights and Remedies Cumulative.** Any enumeration of the District's rights and remedies set forth in this Agreement is not exhaustive. The District's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of the District's rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.
- 33. Time is of the Essence.** Time is of the essence with regard to performance of any services under this Agreement, unless the parties agree otherwise in writing.
- 34. Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer-employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as may from time to time be provided by written instrument signed by both parties.
- 35. Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.
- 36. Warranties and Maintenance.** The Contractor shall provide to the District the warranties and maintenance as set forth in **Exhibit E**.

**37. Contractor Representations.** The Contractor represents and warrants the following to the District (in addition to any other representations and warranties contained elsewhere), as an inducement to the District to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work:

- A. That it and its subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- B. That it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- C. That it is authorized to do business in the State of Nebraska and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- D. That its execution of this Agreement and its performance thereof is within its duly authorized powers;
- E. That its duly authorized representative has visited the site of the Project, familiarized himself with the local and special conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents; and
- F. That it possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and it will perform the work with the care, skill, and diligence of such a contractor.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the Owner is relying upon the Contractor's skill and experience in connection with the Work called for hereunder.

**38. Badging, Identification, and Other Rules.** When present on the District's property, the Contractor and its employees and subcontractors or anyone directly or indirectly employed by or representing any of them, shall

- A. wear uniform at all times with company identification;
- B. carry photo identification;
- C. not smoke or otherwise use tobacco;
- D. not use, or be under the influence of, alcohol or drugs;
- E. not carry a firearm or other weapon; and
- F. comply with all of the school district's rules, policies, procedures which are intended to protect the safety and health of its faculty, staff, students, and visitors

**39. Background Checks.** Contractor shall conduct a background check for all employees or subcontractors providing services under this Agreement in a manner approved by the District. The District will determine if the person is authorized to provide services, in accordance with state, federal and local policy.

**40. Attachments.** Attachments to this Agreement include the following:

- Exhibit A – Scope of Good or Services to be provided to District
- Exhibit B – Payment Terms & Schedule
- Exhibit C – Request for Proposal or Invitation for Bids ("ITB")



Exhibit D – Contractor’s Proposal or Bid  
Exhibit E – Warranties and Maintenance

IN WITNESS WHEREOF the parties have executed this Agreement on the date last date written below.

**DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **EXHIBIT "A"**

### **SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO DISTRICT**

- 1. Scope of Work.** The Work to be performed shall consist of the following and/or as more specifically provided in Exhibit D:
  - All work included in the bid documents, including but not necessarily limited to the Project Manual dated January 22, 2016; Addendum No. 1 dated 2/18/2016; Addendum No. 2 dated 2/19/2016; and Addendum No. 3 dated 2/23/2016;
  - Replacement of the HVAC systems in the entire school with new Roof Top Units (RTUs);
  - Existing systems will be demolished and disposed of when they are no longer needed;
  - The Work will be completed under a phased timeline to accommodate the school being fully occupied throughout the year;
  - Associated work required for the new HVAC systems will include new lighting and ceilings in limited areas, as well as new electrical services and gas services;
  - Work shall include a new walkway; and
  - Contractor is required to coordinate with a separate contractor hired to do a partial roof replacement.
  
- 2. Contractor's Duties.** Contractor's duties are as follows:
  - A. Contractor shall supervise, direct and complete the Work using its best care, skill, attention and diligence. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures for coordinating and completing the Work. Contractor shall cooperate with District and any other person whose work may interfere with Contractor's Work, participate in work schedules and notify District of any material interference with Contractor's Work.
  - B. Unless otherwise provided in the Agreement, Contractor shall provide and pay for all labor, materials, equipment, tools, machinery, transportation and other facilities and services necessary for proper completion of the Work.
  - C. Contractor shall comply with all laws, ordinances, rules, regulations and orders of all public authorities relating to the Work. If the Agreement is at variance with any such law, ordinance, rule, regulation or order, Contractor shall notify District in writing promptly upon discovery of such variance.
  - D. Contractor shall pay all state and federal taxes required by law in connection with the Work, including, but not limited to, sales, use, all employment, income, withholding and similar taxes and shall timely pay over such taxes, including taxes withheld from its employees' compensation, to the appropriate governing agencies and shall secure and pay for all permits, licenses, certifications, and consents required by law or necessary to perform the work and give all notices and pay all fees and otherwise comply with all applicable city, county, state, and federal laws, ordinances, and rules pertaining to such work or necessary for the proper completion of the Work.

- E. Contractor shall at all times, keep and maintain the construction site in a neat and clean condition. Contractor shall keep the premises and the surrounding area free from accumulation of waste materials and rubbish caused by construction operations. Immediately following completion of the Work, Contractor shall remove from and about the construction site waste material, rubbish and Contractor's tools, construction equipment, machinery and surplus materials. If the Contractor fails to maintain the construction site as provided herein, the District may do so and the cost thereof shall be charged to the Contractor and/or deducted from payment then or thereafter due to the Contractor.
- F. Contractor shall provide for and oversee all safety orders, precautions and programs necessary for the reasonable safety of the Work and shall implement all safety instructions identified by the designated individual of District. Contractor shall take all reasonable precautions for the safety of all employees, subcontractors and other persons for whom the work might affect all work and materials incorporated in the Project and all property improvements on the construction site and adjacent to the construction site. Contractor shall immediately notify District of any personal injury or property damage at or near the construction site.

**3. Warranty.** Contractor warrants that all materials and equipment furnished shall be new and that all work under this Agreement shall be of first-class quality, free from faults and defects and in conformance with this Agreement. All work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. Contractor shall, at its sole cost and expense, repair or replace any defective material, equipment or workmanship which shall appear within a period of one year from the date of completion of the Work. In the event of repairs or replacements being necessary, Contractor agrees to repair or replace the same within three (3) days after notice by the District. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by this Agreement or the Attachments hereto. Payment by District shall not (a) constitute an acceptance of work not done in accordance with this Agreement or (b) relieve the Contractor of liability with respect to any express warranties or with respect to the responsibility for defective materials, equipment or workmanship. The provisions of this paragraph shall be in addition to any warranties provided in Exhibit E.

**4. Change Orders.** District may at any time make changes in, additions to, and omissions from the work to be performed and materials to be furnished under this Agreement, and Contractor shall promptly proceed with the performance of the modification upon execution of a written Change Order signed by Contractor and District with a written notation of the cost or deduction for each modification and the delay of completion or time saving caused by such modification. A Change Order is a written instrument prepared by the Architect/Engineer and signed by the District, Contractor and Architect/stating their agreement upon the change in the Work; the amount of the adjustment, if any, in the Contract Price; and the extent of the adjustment, if any, in the Contract Time. The Change Order shall be in a form acceptable to the District and Contractor. In the event the parties cannot agree on a Change Order form, they shall use AIA Document G701-2001.

**5. Suspension by District for Convenience.** District may order Contractor in writing to suspend, delay or interrupt all or any part of the Work for such period of time as may be determined to be appropriate for the convenience of the District; provided, however, short/incidental stoppage of the Work shall not be deemed a suspension, delay or interruption of work. The Contract Price and/or Contract Time may thereafter be reasonably adjusted by

mutual agreement to account for any increase in the time and/or cost of performance of Work caused by such suspension, delay or interruption.

**6. Protection of Work.** Contractor shall be responsible for its work, property and/or materials until completion and final acceptance of the Work, and shall bear the risk of any loss or damage until such acceptance. In the event of loss or damage, Contractor shall proceed promptly to make repairs or replacements of the damaged work, property and/or materials at its expense, as directed by the District. Contractor waives all rights Contractor may have against the District for loss or damage to Contractor's work, property or materials at the construction site, unless such loss or damage results from an intentional act of the District.

**7. Liens.** Contractor agrees (a) to immediately satisfy any lien or encumbrance which, because of any act, omission or default of Contractor or any subcontractor or materialmen, is filed upon or against the property of District and (b) to indemnify and hold harmless District against all resulting losses, costs and expenses.

## **EXHIBIT "B"**

### **1. Payment Terms/ Payment Schedule.**

The District will pay for the goods and/or services identified in Exhibit A and provided by Contractor under this Agreement as follows:

- A. The "Contract Price" includes all compensation, fees, expenses, or any payment or reimbursement of any kind and for any reason. Contractor guarantees that the Contract Price shall not exceed **\$3,607,092**. The Contractor shall be responsible for any cost of the Work above the Contract Price without reimbursement or additional compensation from the Owner. If the Contractor completes the Project for less than the Contract Price, the remaining funds shall be credited to the Owner as a deduction from the Contract Price. The Maximum Price is subject to additions and deductions by Change Order as provided in this Agreement.
- B. The Maximum Price may be adjusted on account of District-approved changes in the Work made by Change Order. The adjustment shall be based on: Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the District and its agents; unit prices stated in this Agreement or subsequently agreed upon; or a cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee. Adjustments to the Maximum Price shall only be considered if presented in accordance with this Agreement and prior to performing additional Work and incurring additional costs.
- C. District shall pay Contractor **10%** of the Contract Price within **30** days after execution of this Agreement. Thereafter, Contractor shall invoice District on a monthly basis no later than the 5th of each month for completed work and materials or equipment that has been delivered and suitably stored at the worksite.
- D. District agrees to pay Contractor for all undisputed amounts within thirty (30) days of receipt of invoice, provided that goods and services have been accepted by the District as hereinafter provided, less retainage of 5%.
- E. Upon final completion of the Work in accordance with the Agreement, Contractor shall provide (a) written notice thereof to District (the "Notice of Completion") and (b) final lien waivers from Contractor and all subcontractors and materialmen. The final payment of the remaining balance due hereunder, including any retainage amounts, shall be made by District to Contractor within thirty (30) working days after District has accepted the Notice of Completion and received all such lien waivers. District's acceptance of the Notice of Completion, however, shall not be deemed an estoppel or waiver of any right of District under the Agreement.

### **2. Acceptance of Services or Products.**

- A. The Contractor shall deliver any goods, perform any services or both in accordance with the schedule set forth in the ITB, the time specified in a purchase order issued by the District, or this Agreement (whichever is later).
- B. Unless otherwise agreed to by the parties, the Contractor shall provide

written notification of completion of any deliveries, or performances of services or both, to the District ("Delivery Notice").

- C. The District shall have thirty (30) days from the date of receipt of the Delivery Notice to provide the Contractor with written notification of acceptance or rejection due to unsatisfactory performance or nonconforming goods.
- D. If the District issues a rejection notice, the Contractor shall as quickly as is practicable, correct or replace all deficiencies at its expense. The District shall not unreasonably withhold or delay its acceptance or rejection.

**3. Title and Risk of Loss.**

- A. Title and risk of loss for goods shall remain with the Contractor until goods are accepted by the District.
- B. Insurance during shipment and until the goods are accepted by the District is the responsibility of the Contractor.

- 4. Offset.** In the event of any breach by Contractor of any provision or obligation of this Agreement, the District shall have the right to offset any payment due to or to become due to Contractor an amount sufficient to completely indemnify and hold harmless the District from any resulting loss, damage, or expenses therefrom.

- 5. Payment Upon Termination.** Upon termination of this Agreement for any reason, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the work, (ii) claims that the Owner has against the Contractor under the contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

**EXHIBIT "C"**  
**Invitation to Bid**

**[INSERT ITB]**

**Exhibit "D"**  
**Contractor's Bid/Proposal**

**[INSERT CONTRACTOR'S BID/PROPOSAL]**



**Exhibit "E"**  
**Warranties and Maintenance Agreements**

**[INSERT WARRANTIES AND MAINTENANCE AGREEMENTS]**