

Agenda of Special Meeting

The Board of Trustees

Big Spring Independent School District

A Special Meeting of the Board of Trustees of Big Spring Independent School District will be held Thursday, July 23, 2020, beginning at 5:15 PM in the High School Board Room, 707 E. 11th Place, Big Spring, TX 79720.

The subjects to be discussed or considered or upon which any formal action may be taken are as listed below. Items do not have to be taken in the order shown on this meeting notice.

1. Opening of Meeting
 - A. Prayer
 - B. Pledge
2. Public Comments
3. Discussion Items
 - A. Discuss School Reopening Plan
4. Action Items
 - A. Consideration and Possible Action on a Standard Form Owner/Contractor Agreement with Javine West Texas LLC, dba Varitec Solutions, for Contractor Services Relating to the HVAC system upgrades at Kentwood Elementary, and other Action related thereto
 - B. Consider Approval of Budget Amendment and Expenditures over \$150,000
 - C. Consider Resolution Approving the Terms and Conditions of an Interlocal Agreement with Region 10 Retirement Asset Management Services Cooperative
5. Adjournment

And any other business that may be lawfully brought before the Board of Trustees at such meeting. The undersigned officer certified that the foregoing notice was posted on the window at the Central Administration Building of Big Spring ISD at 708 11th Place, Big Spring, Howard County, Texas, 79720.

If business is not completed at the conclusion of the meeting, the Board reserves the option to recess and reconvene at a later date and time.



For the Board of Trustees

This place is reserved on the Agenda for Public Comments as explained in Policy BED(LOCAL):

Limit on Participation	Audience participation at a Board meeting is limited to the portion of the meeting designated to receive public comment in accordance with this policy. At all other times during a Board meeting, the audience shall not enter into discussion or debate on matters being considered by the Board, unless requested by the presiding officer.
Public Comment	
Regular Meetings	At regular Board meetings, the Board shall permit public comment, regardless of whether the topic is an item on the agenda posted with notice of the meeting.
Special Meetings	At all other Board meetings, public comment shall be limited to items on the agenda posted with notice of the meeting.
Procedures	Individuals who wish to participate during the portion of the meeting designated for public comment shall sign up with the presiding officer or designee before the meeting begins as specified in the Board's procedures on public comment and shall indicate the agenda item or topic on which they wish to address the Board. Public comment shall occur at the beginning of the meeting. Except as permitted by this policy and the Board's procedures on public comment, an individual's comments to the Board shall not exceed five minutes per meeting.
Meeting Management	When necessary for effective meeting management or to accommodate large numbers of individuals wishing to address the Board, the presiding officer may make adjustments to public comment procedures, including adjusting when public comment will occur during the meeting, reordering agenda items, deferring public comment on non-agenda items, continuing agenda items to a later meeting, providing expanded opportunity for public comment, or establishing an overall time limit for public comment and adjusting the time allotted to each speaker. However, no individual shall be given less than one minute to make comments.
Board's Response	Specific factual information or recitation of existing policy may be furnished in response to inquiries, but the Board shall not deliberate or decide regarding any subject that is not included on the agenda posted with notice of the meeting.
Complaints and Concerns	The presiding officer or designee shall determine whether an individual addressing the Board has attempted to solve a matter administratively through resolution channels established by policy. If not, the individual shall be referred to the appropriate policy to seek resolution: <ul style="list-style-type: none">• Employee complaints: DGBA• Student or parent complaints: FNG• Public complaints: GF
Disruption	The Board shall not tolerate disruption of the meeting by members of the audience. If, after at least one warning from the presiding officer, any individual continues to disrupt the meeting by his or her words or actions, the presiding officer may request assistance from law enforcement officials to have the individual removed from the meeting.

To: Board of Trustees
From: Jay McWilliams, Superintendent
Subject: Discuss School Reopening Plan
Date: July 23, 2020

Jay McWilliams will lead the discussion on the plans for reopening school.

To: Board of Trustees

From: Jay McWilliams, Superintendent and John Sparks, Director of Maintenance

Subject: Consideration and possible action on a Standard Form Owner/Contractor Agreement with Javine west Texas LLC, dba Varitec Solutions, for contractor services relating to the HVAC system upgrades at Kentwood Elementary, and other action related thereto

Date: July 23, 2020

Mr. McWilliams will lead the discussion explaining the HVAC project with Varitec. Included on the following pages is a proposed contract between the District and Varitec Solutions.

Motion Language: “I move to approve the contract with Javine West Texas LLC, dba Varitec Solutions, for the HVAC system upgrades and improvements at Kentwood Elementary, and that as required by Texas Government Code 791.011(j), Fincher Engineering, LLC, is designated to certify that the plans and specifications for this Project have been prepared by a licensed engineer and further authorize the superintendent to execute the contract with Varitec Solutions on the District’s behalf.”

**BIG SPRING INDEPENDENT SCHOOL DISTRICT
STANDARD FORM OWNER/CONTRACTOR AGREEMENT
HVAC UPGRADES-KENTWOOD ELEMENTARY SCHOOL**

**BIG SPRING INDEPENDENT SCHOOL DISTRICT
STANDARD FORM OWNER/CONTRACTOR AGREEMENT
HVAC UPGRADES-KENTWOOD ELEMENTARY SCHOOL**

THIS AGREEMENT made as of the 23rd day of July, 2020, between the Owner:

Big Spring Independent School District
708 East 11th Place
Big Spring, TX 79720

The Owner's authorized representative is: Jay McWilliams, Superintendent, or his designee
Phone number: (432) 264-3600
Email: jmcwilliams@bsisd.esc18.net

The term "Owner" means the Big Spring Independent School District or the Owner's authorized representative.

The Contractor is:

Javine West Texas LLC, dba Varitec Solutions
2851 W. Kathleen Rd.
Phoenix, AZ 85053

Telephone Number: 806-224-6446

The Contractor's authorized representative is: Justin Tubb
Email: justint@varitecsolutions.com

The Project is: HVAC upgrades to Kentwood Elementary School, as more fully described in the Scope of Work in Exhibit "B" attached hereto and made a part hereof.

WITNESSETH:

The Owner and Contractor agree as follows:

1. THE CONTRACT DOCUMENTS.

The Contract Documents consist of this Standard form Owner/Contractor Agreement (the "Agreement"), all sections of the Project Manual, if any, including Drawings, Specifications, and Addenda issued prior to execution of the Contract; manufacturer's installation instructions, the Owner's Request for Proposals and Contractor's Proposal documents submitted in response to such Request; other documents as may be listed in this Agreement; and all modifications issued after the Agreement. A Modification is (1) a written amendment to the Agreement signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect, if any. The Project Manual is a volume assembled for the Work which includes the bidding requirements, sample forms, Conditions of the Contract and Specifications.

In the event of conflict, terms and conditions contained in this Agreement shall take precedence over terms and conditions contained in the Project Manual, if any, and the terms and conditions in the Project Manual, if any, shall take precedence over all other terms and conditions contained in the other Contract Documents, unless specifically agreed otherwise herein.

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification signed by Contractor, approved by Owner's Board of Trustees, and signed by the representative of Owner's Board of Trustees who is authorized to sign contracts. As a material consideration for the making of the Contract, modifications to the Contract shall not be construed against the maker of said modifications. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect, if any, or the Architect's consultants, if any, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, if any, or (4) between any persons or entities other than the Owner and the Contractor.

2. DATE OF COMMENCEMENT, FINAL COMPLETION, AND LIQUIDATED DAMAGES.

a. The date of commencement is the date to be fixed in a written notice to proceed issued by the Owner no later than **August 3, 2020**.

b. The Contractor shall achieve Substantial Completion of the entire Project not later than **September 30, 2020**, subject to adjustments as provided in the Contract, and Final Completion of the Project shall be no later than 30 days following Substantial Completion.

c. **Time is of the Essence and Liquidated Damages.** Timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Project

by the dates designated under Section 2.b. above, or by the agreed extended date, as provided by Section 8.b. herein. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Contractor that the amounts stated below are the minimum value of the costs and damages caused by failure of Contractor to substantially and finally complete the Work within the allotted or agreed extended times, that such sums are liquidated damages and shall not be construed as a penalty. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not substantially completed, meaning properly functioning with only minor system adjustments, punch list items and clean up remaining to achieve Final Completion, within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for the following categories of damages to the Owner: potential hazards to students, staff and visitors, additional architectural, engineering, program management fees (and fees of any other consultants); increased administrative or operational expenses; additional attorney's fees; increased maintenance and custodial costs and additional, utilities, security and clean-up costs, and other increased costs. Failure to complete the Work within the designated or agreed extended dates of Substantial Completion, shall be construed as a breach of this Agreement. Owner and Contractor agree that should Contractor fail to achieve Substantial Completion of the Work by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Contractor and Owner agree that the amount of liquidated damages for each calendar day Substantial Completion is delayed beyond the date set for Substantial Completion for the Project shall be the sum of \$500 per day. Owner may deduct such liquidated damages from any Payment made to Contractor before or at Final Payment; or, if sufficient funds are not available, then Contractor shall pay Owner, the amounts specified per day for each and every calendar day the breach continues after the deadline for Substantial Completion of the Work.

Such liquidated damages shall be Owner's sole remedy for damages caused by failure of Contractor to complete the Work within the allotted or agreed extended time for Substantial Completion, but not otherwise. Such liquidated damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

3. CONTRACT SUM.

The Owner shall pay the Contractor for the Contractor's full performance of the Contract, the Contract Sum of Five Hundred Forty-One Thousand, Six Hundred Seventy Dollars (\$541,670.00), subject to additions, deductions and/or liquidated damages as provided in the Contract.

The Contract Sum does NOT contain the Owner's Contingency in the amount of \$25,000.00. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Owner's authorized representative may approve any expenditure

from Owner's Contingency for a change order without further Board of Trustees approval within limits specified in Section 9.a of this Agreement. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall NOT be credited to the Contract Sum.

4. PROGRESS PAYMENTS.

a. Based upon Applications for Payment submitted to the Owner by the Contractor, the Owner will make progress payments as provided below.

b. Payment, when due, shall be made to Contractor in accordance with Owner's ordinary business practices in proportion to the services performed. Any Application for Payment remaining unpaid after forty-five (45) days, shall be subject to simple interest as set out in Texas Government Code Chapter 2251, Subchapter B. Nothing contained herein shall prevent or otherwise limit Owner from withholding any payment or portion of a payment for which Owner has provided Contractor notice of a bona fide dispute.

c. Based on Contractor's Applications for Payment and on the Architect/Engineer's observations and evaluations of the Project, or based on the Owner's observations and evaluations if there is no Architect/Engineer, the Owner will determine the amounts due to Contractor.

d. Any payment for undisputed amounts not paid in the time specified under Texas Government Code §2251.001, *et seq.* above shall be overdue. An overdue payment bears interest at the legal rate established by the Texas Government Code, §2251.025.

5. FINAL PAYMENT.

a. Final payment, constituting the entire unpaid balance of the Contract Sum (less any offsets or damages as provided in the Contract Documents), will be made by the Owner when (1) the Contract has been fully performed by the Contractor as determined by Owner, and (2) the completed Project has been accepted by the Big Spring ISD Board of Trustees or its designee.

b. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner:

- (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project have been paid or otherwise satisfied,
- (2) a certificate evidencing that the required insurance will remain in force after final payment and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner,
- (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Owner,
- (4) consent of surety to final payment,

(5) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and

(6) written warranties and other documents required by the Contract and submitted to the Owner's Superintendent of Schools.

c. Acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor, except those previously made in writing and identified by the Contractor as unsettled at the time of final Application for Payment.

6. OBLIGATIONS OF CONTRACTOR.

a. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.

Before ordering materials or equipment or commencing the Project, the contractor shall carefully:

(1) study and compare the Contract Documents with each other and with other information furnished by Owner,

(2) verify all indicated dimensions,

(3) take field measurements,

(4) verify field conditions, and

(5) compare the field measurements and conditions and other information known to the Contractor with the Contract Documents, and verify that there are no impediments to the Project being constructed at the proposed site.

Errors, inconsistencies or omissions discovered shall be reported in writing to the Owner at once. In the event that discrepancies occur between ordered material and actual conditions, of which the Owner was not notified beforehand, costs to correct such discrepancies shall be borne by Contractor.

b. SUPERVISION AND CONSTRUCTION PROCEDURES.

(1) The Contractor shall supervise and direct the Project, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Project under the Contract, unless the Contract gives other specific instructions concerning these matters.

(2) The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Project under a contract with the Contractor.

(3) On trench excavations in excess of five feet in depth, Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures in accordance with Texas Government Code §2166.303, Texas Health & Safety Code, Subchapter C, §756.021, *et seq.*, and OSHA 1926.652-.653. Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in safe execution of trenching and shoring.

c. LABOR AND MATERIALS.

(1) Unless otherwise provided in the Contract, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, utilities (if not sufficiently available on site), transportation, and other facilities and services necessary for proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project.

(2) The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall also require adequate and appropriate dress of Contractor's employees, Subcontractors, and all other persons carrying out the Contract.

(3) Contractor further agrees to submit any of its employees, agents, subcontractors or sub-subcontractors or their respective employees and agents, who meet the requirements of a covered employee under Texas Education Code §22.08341, to national criminal history checks or, alternatively, agrees to keep such employees and agents from having any direct contact with students of Owner. Failure to comply with the requirements of Texas Education Code §22.08341 shall constitute an immediate event of default by Contractor. Further, Contractor shall complete the "Contractor Certification" attached hereto as Exhibit "A" before beginning any Work that is the subject of this Agreement.

(4) Contractor shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Owner reserves the right to audit contractor's books and records relevant to all services provided under the Contract Documents in a manner consistent with the audit process set forth in the agreement between Contractor and The Interlocal Purchasing System ("TIPS). In the event such audit reveals any errors in over payments by the Owner, Contractor shall refund Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to withhold such amounts owing the Owner from any payments due the Contractor. Contractor shall make

such reports and records available to inspection or audit by the Owner and its agents within five (5) working days of request by Owner, or its agent. Such records shall be maintained by Contractor for at least four years.

d. WARRANTY.

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract, that work on the Project shall be performed in a good and workmanlike manner, that the Project will be free from defects not inherent in the quality required or permitted, and that the Project will conform with the requirements of the Contract.

e. TAXES.

The Owner qualifies for exemption from State and Local Sales Tax pursuant to the provisions of Chapter 151 of the Tax Code of the State of Texas. The Contractor may claim exemption from payment of applicable State and Local Sales Taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. However, the Contractor shall pay all necessary local, county and state taxes, compensation tax, social security and withholding payments as required by law. **THE CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE OWNER OF AND FROM ALL CLAIMS AND DEMANDS MADE BY FAILURE OF THE CONTRACTOR OR SUBCONTRACTORS TO COMPLY WITH THE PROVISIONS OF ANY OR ALL OF SAID LAWS AND AMENDMENTS.**

f. PERMITS, FEES AND NOTICES.

(1) The Contractor shall secure and pay for the building permit and other permits, governmental fees and licenses necessary for proper execution and completion of the Project which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. Subject to prior written notice to and approval of Owner, Contractor may be reimbursed the actual cost of such fees without markup if submitted with proper supporting documentation and proof of payment as part of Contractor's Applications for Payment.

(2) The Contractor shall comply with, give notices and certifications and provide certifications as may be required by applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Project including, but not limited to, 19 T.A.C. §61.1036.

g. USE OF SITE.

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract, as designated by the Owner, and shall not unreasonably encumber the site with materials or equipment.

h. CLEANING UP.

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Project the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials so that the Project is fit to use for its intended purpose. If the Contractor fails to clean up as provided in the Contract, the Owner may do so and the cost thereof shall be charged to the Contractor as an offset against any amounts still owed to the Contractor or billed to the Contractor directly.

i. INDEMNIFICATION.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF), INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS.

IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE

CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS OR AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM : (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE §130.001, ET SEQ.

FURTHER, AND IN ACCORDANCE WITH TEXAS INSURANCE CODE §151.102, AS APPLICABLE, THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION SHALL NOT REQUIRE CONTRACTOR TO INDEMNIFY, HOLD HARMLESS, OR DEFEND THE PARTY(S) INDEMNIFIED HEREUNDER AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE OWNER, ITS AGENT OR EMPLOYEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE OWNER, OTHER THAN THE CONTRACTOR OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER.

THE PROVISIONS OF THIS SECTION, IN ITS ENTIRETY, SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

j. AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE PROJECT.

(1) The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of persons or entities proposed for each principle portion of the Project, if any. The Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any proposed person or entity. Failure of the Owner to reply within ten (10) District business days shall constitute notice of no reasonable objection.

(2) The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

- (3) If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsibly in submitting names as required.
- (4) The Contractor shall not change a subcontractor, person or entity previously selected if, upon reasonable notice to Owner, Owner makes reasonable objection to such change.
- (5) The Contractor shall not subcontract the Project as a whole. The approval of Subcontractors in no way relieves the Contractor from full responsibility.
- (6) Communications by and with subcontractors and material suppliers shall be through the Contractor.
- (7) The Contract shall not be construed to create a contractual relationship of any kind:
 - (a) between the Owner and a Subcontractor or Sub-subcontractor, or
 - (b) between any persons or entities other than the Owner and Contractor.

k. **WORKERS' COMPENSATION.**

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

Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096) include 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 that 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 do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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 §401.011(44) for all employees of the Contractor providing services on the project for the duration of the Project.

The Contractor must provide a certificate of coverage to the Owner prior to being awarded the Contract.

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 Owner showing that coverage has been extended.

The Contractor shall obtain from each person providing services on a project, and provide to the Owner:

- (1) A certificate of coverage, prior to that person beginning work on the Project, so the Owner 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.

The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten 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.

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.

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 §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 Owner in writing by certified mail or personal delivery, within ten 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 items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner 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.

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

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC §110.110(i).

1. **PAYMENT AND PERFORMANCE BONDS.**

In accordance with Texas Government Code §2253.021, the Contractor shall furnish, before beginning the Work, a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, if the amount payable to Contractor by Owner meets or exceeds \$100,000, to be used as security of the faithful performance of the Contract. The Contractor shall also furnish, before beginning the Work, a Payment Bond in accordance with Texas Government Code §2253.021, in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with the Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements Section 7.19-1, Texas Insurance Code. Proof of such Performance and Payment Bonds shall be submitted to the Owner's authorized representative for inspection and review prior to beginning any Work on the Project.

(1) The Contractor shall deliver the required Bonds to the Owner not later than the date set in the Notice to Proceed. All Bonds will be reviewed by the Owner for compliance with the Contract Documents prior to the start of construction.

(2) All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

m. **CONTRACTOR'S INSURANCE**

Contractor shall carry the following insurance with the minimum limits set forth herein. Such insurance must be carried with insurance companies acceptable to Owner. Contractor shall maintain such insurance, at its sole cost and expense, in full force and effect until this Contract has been fully performed, all equipment, implements and machinery of Contractor has been removed from, and all employees, agents, representatives and Subcontractors of Contractor have left Owner's premises, and final payment of the Contract Sum is made, unless any such coverage is required pursuant to the terms of the Contract Documents to be maintained after all of the foregoing items have been completed. Contractor shall cause each insurance company (i) to issue the insurance on an occurrence basis; (ii) to provide defense as additional benefit and not within the limits of liability, (iii) to issue an endorsement to all policies that the policies are primary and that Owner's policies are excess, secondary and noncontributing, (iv) issue an endorsement to all policies to provide a waiver of subrogation in favor of Owner, (v) to issue an endorsement to all policies, except the workers' compensation and employer's liability insurance policies, to include Owner and its trustees, officers, employees, and agents as "additional insureds," and, (vi) to include in each insurance policy a provision that the insurance company or companies shall not cancel, non-renew, or change coverage from the requirements of the Contract Documents without providing at least 30 days' advance written notice to Owner. The insurance company or companies shall not exclude from coverage the negligence, of the "additional insureds," unless such negligence is solely attributable to the conduct of an "additional insured." Contractor releases Owner and its trustees, officers, employees and agents from any liability covered by the insurance for which subrogation is waived. Contractor shall provide to Owner at least 30 days' advance written notice of any contemplated cancellation, non-renewal, or material reduction in insurance coverage. Contractor shall provide to Owner a certified copy of any and all insurance policies required in this Contract if Owner requests a copy.

Insurance coverage shall be written for not less than the following limits, or greater if required by law:

(1) Employer's Liability insurance with minimum limits of \$1,000,000 for each employee for bodily injury by accident and for each employee for bodily injury by disease.

(2) Commercial General Liability insurance, including liability for the Project and blanket coverage, Personal and Advertising Injury, Products-Completed Operations, Medical Payments, Bodily Injury, and Property Damage, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products-completed operations aggregate, \$1,000,000 personal and advertising injury per occurrence, and \$5,000 medical expense. Contractor shall obtain an endorsement to each insurance policy to provide aggregate limits per location. Contractor shall cause each insurance company to delete any

contractual liability exclusion with respect to the insurance, including insurance coverage for personal injury, hazards of explosion, collapse, fire, and underground property damage.

(3) Business Automobile Liability insurance with minimum combined single limits of \$1,000,000. Contractor shall cause each insurance company to provide coverage for liability arising out of the operation of owned, hired, and non-owned vehicles.

(4) Contractual Liability insurance with minimum limits of \$1,000,000 per occurrence, and \$1,000,000 general aggregate. Contractor shall obtain an endorsement to each insurance policy to provide aggregate limits per location. The contractual liability insurance shall not be limited to coverage for the Indemnity, Waiver, and Obligation to Defend provisions in this Contract, but, instead, the contractual liability insurance shall cover all of Contractor's obligations to the fullest extent possible under the contractual liability endorsement. Further, the contractual liability insurance shall not limit, in any way, coverage provided to Owner and its trustees, officers, employees, and agents as additional insureds under each of Contractor's insurance policies.

(5) Builder's Risk "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the initial Contract Sum plus the value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Contractor, subcontractors, and sub-subcontractors. Contractor shall be responsible for maintaining said builder's risk insurance until the date of Final Completion. For any claim made against the builder's risk insurance, the deductible shall not exceed \$25,000.

(6) Umbrella/Excess Liability Insurance with minimum limits of \$1,000,000. Contractor shall cause each insurance company to provide the insurance on an umbrella basis in excess over and no less broad than the liability coverages required in this Contract, with the same inception and expiration dates as Commercial General Liability insurance, and with coverage that "drops down" for exhausted aggregate limits under liability coverages in this Contract.

Contractor shall provide to Owner before the Work is started and at least 30 days prior to the expiration of a policy or policies of insurance in effect during the term of this Contract a certificate or certificates of insurance evidencing all required insurance in the Contract Documents and acceptable to Owner. All certificates, among other things, shall:

- (1) Show Owner as a certificate holder.
- (2) Show Contractor as the Named Insured.
- (3) Show the names of the insurance companies providing each coverage, the policy numbers of each coverage, and policy dates of each coverage.
- (4) Show the name of the person providing the certificate and that person's address and telephone number.

- (5) Contain the signature of an authorized representative of the person providing the certificate.
- (6) Show that each insurance company named Owner and its trustees, officers, employees, and agents as additional insureds in each insurance policy.
- (7) Show the primary status of each insurance policy.
- (8) Have attached copies of all required endorsements to each insurance policy, and not contain the phrases “endeavor to” and “but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents or representatives,” or similar phrases and shall include the commitment that each insurance company shall issue each insurance policy to the named and additional insureds, that each policy is in full force and effect, and that each insurance company shall give to Owner at least 30 days’ advance written notice, by certified mail, return receipt requested in the event of cancellation, non-renewal, or material reduction in coverage of any insurance policy.

Contractor shall not procure an insurance policy or policies with deductibles or self-insured retention in excess of \$10,000 or with an endorsement restricting, limiting, or excluding coverage in any manner without Owner’s prior written approval. Contractor shall pay all deductibles in the insurance that Contractor is required to provide under the Contract Documents.

The Contractor shall purchase and maintain insurance covering the Owner’s contingent liability for claims which may arise from operations under the Contract. This coverage can be afforded by adding Owner as additional insured on general liability insurance coverage.

Contractor’s failure to procure and maintain the required insurance shall constitute a material breach of, and default under, this Contract. If Contractor fails to remedy the breach within 5 days after notice from Owner, Owner may, in addition to any other remedy available to it, at its option, purchase the insurance, at Contractor’s expense, or immediately terminate this Contract. Contractor shall Indemnify and Defend Indemnified Persons from and against any Claims Arising from Contractor’s failure to procure and/or maintain the insurance.

n. EQUAL EMPLOYMENT OPPORTUNITIES.

Contractor acknowledges that Owner, as an independent school district, is a political subdivision of the State of Texas and has certain requirements concerning equal employment and affirmative action under state and federal law, and shall comply with all applicable laws, regulations and special requirements under such federal and state laws, and the Contract Documents regarding equal employment opportunity and affirmative action programs.

Contractor and Contractor's Subcontractors, if any, shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting

forth policies of nondiscrimination.

7. OWNER'S RIGHTS AND REMEDIES.

a. OWNER'S RIGHT TO REJECT THE PROJECT AND TO REQUIRE TESTING.

The Owner may reject all or part of the Project which does not conform to the Contract Documents. Whenever the Owner considers it necessary or advisable, the Owner may require additional inspection or testing of the Project. Owner reserves the right to withhold any Progress Payment or portion thereof for any non-conforming or inferior Work on the Project, and the cost of any additional testing associated with non-conforming portions of the Project shall be charged to the Contractor and may be offset against any amounts still owed to the Contractor.

b. OWNER'S RIGHT TO STOP THE PROJECT.

If Owner discovers any defective Work, including any portion of Work not constructed in accordance with the Contract Documents, Contractor shall promptly, without cost to the Owner, correct such defective Work. If Contractor fails to commence such corrections within a reasonable period of time, not to exceed thirty (30) days, and does not diligently continue the prosecution of such corrections, or if the Contractor persistently fails to do the Project in accordance with the Contract, the Owner, by written order, may order the Contractor to stop the Project, or any portion thereof, until the cause for such order has been eliminated.

c. OWNER'S RIGHT TO CARRY OUT THE PROJECT.

If the Contractor defaults or neglects to carry out the Project in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case the Owner shall deduct from payments then or thereafter due the Contractor the cost of correcting such deficiencies. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

d. TERMINATION BY THE OWNER FOR CAUSE.

- (1) The Owner may terminate the Contract if the Contractor:
 - (a) persistently or repeatedly refuses or fails to do the work on the Project, or any part thereof, in accordance with the Contract and/or fails to supply enough properly skilled workers or proper materials;
 - (b) fails to make prompt payment to Subcontractors or for materials or labor;

- (c) repeatedly disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
 - (d) otherwise is guilty of substantial breach of a provision of the Contract,
- or
- (e) is adjudged bankrupt, makes a general assignment for the benefit of his creditors, or has a receiver appointed on account of its insolvency.

(2) When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- (a) take possession of the site and all materials, including tools, and construction equipment and machinery located thereon which have been leased by the Contractor on behalf of the Owner;
- (b) accept assignment of subcontracts; and
- (c) finish the Project by whatever reasonable method the Owner may deem expedient.

(3) When the Owner terminates the Contract for one of the reasons stated in Subparagraph 7(d)(1) above, the Contractor shall not be entitled to receive further payment until the Project is finished.

(4) If the unpaid balance of the Contract Sum exceeds costs of finishing the Project, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be an obligation for payment which shall survive termination of the Contract.

e. **TERMINATION FOR CONVENIENCE.**

The Owner may, at its option and at any time, terminate the whole or any part of this Contract for the convenience of the Owner. Contractor agrees that upon any such termination, the Contractor's sole remedy shall be payment of full value for all Work properly performed up to the time of termination, plus reasonable profit thereon, less all payments Contractor has previously received on account of such Work performed. It shall be a condition precedent for such payment, that Owner has received an application for payment from Contractor for the Work Contractor performed prior to notice of termination. Contractor agrees to waive all claims for damages, including lost or anticipated profits from remaining Work, arising from or related to any such termination by Owner.

f. **SUSPENSION BY THE OWNER FOR CONVENIENCE.**

(1) The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as the Owner may determine.

(2) An adjustment may be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

(a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

(b) that an equitable adjustment is made or denied under another provision of this Contract.

8. CLAIMS.

a. CLAIMS FOR ADDITIONAL COST.

If the Contractor wishes to make a claim for an increase in the Contract Sum or for extra costs or damages, the Contractor shall give the Owner written notice thereof within ten days after the event giving rise to such claim. Such claim will be submitted to the Superintendent of the Big Spring Independent School District, or his designee, and his action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made.

b. CLAIMS FOR ADDITIONAL TIME.

(1) If the Contractor wishes to make claim to change the date of Substantial Completion to allow for additional time, the Contractor shall give the Owner written notice thereof within ten (10) days following the beginning of any such delay. In the case of a continuing delay only one claim is necessary. Such claim will be submitted to the Superintendent of the Big Spring Independent School District, or his designee, and his action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made.

(2) If adverse weather conditions, governmental orders due to pandemic, natural disaster or act of God are the basis for a claim for additional time, such claim shall be documented with data substantiating that weather or other conditions were abnormal for the period of time and could not have been reasonably anticipated and that weather or such other conditions had an adverse effect on the scheduled construction.

9. MISCELLANEOUS.

a. AUTHORITY OF BOARD

Only Owner's Board of Trustees, by majority vote, has the power to enter into a contract, to execute a Change Order requiring an increase in the contract sum, or to agree to an extension to the contractual completion date. The Owner's Board shall designate, as appropriate, an authorized representative or representatives to act on its behalf during the course of construction. Such authorized representatives shall have authority to act on behalf of the Owner concerning decisions which do not require majority vote of the Board of Trustees. Such authorized representatives shall also bring recommendations to the Board of Trustees on any matter that requires the Board's

approval. In the event that changes in the scope of the Work are required before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representatives may approve construction change orders, the sum or which do not exceed \$50,000.00 in increased costs. Any such change shall be confirmed in writing between the Contractor and the Board's authorized representatives and notice of such approved changes shall be given to the Board at its next regular meeting. The Board will act as soon as reasonably possible to avoid undue delays in the construction completion date. If any change order causes the cost of the Project to meet or exceed \$100,000, Contractor shall not proceed, unless or until he has tendered a Performance bond in accordance with Section 6.1 of this Agreement.

The Owner's designated representative is: Jay McWilliams, Superintendent, or his successor.

b. **HAZARDOUS MATERIALS.**

IF HAZARDOUS MATERIALS ARE ENCOUNTERED AS A RESULT OF CONTRACTOR OR ITS SUBCONTRACTORS' IMPORTATION OF SUCH MATERIALS ONTO THE PROJECT SITE, THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OWNER AND ITS TRUSTEES, OFFICERS, DIRECTORS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO, ATTORNEYS' FEES, ARISING OUT OF OR RELATED TO THE CONSTRUCTION WORK IN ANY AREA AFFECTED BY HAZARDOUS MATERIALS.

If hazardous materials are encountered as a result of the Owner's failure to identify or remove hazardous materials prior to the commencement of construction, Owner agrees to (1) release the Contractor and its subcontractors, officers, directors, and employees from any and all claims, damages, losses, or expenses incurred by Owner arising out of or related to the performance of the Construction Work in the area affected by the hazardous material up to and including the time when Contractor first learns of or discovers the existence of the hazardous materials, but not for any additional work done by the Contractor after the identification of such hazardous materials; (2) release the Contractor from any indemnification obligations in this Agreement arising out of or related to the hazardous materials, except to the extent that any such claims, damages, losses, or expenses incurred by Owner arise from Contractor's actions or inaction after the initial discovery and identification of hazardous materials; and (3) extend the contract time by the actual number of days that Contractor is delayed in the completion of the contract arising out of or related to the identification, test, and/or abatement of the hazardous material if Contractor is unable to complete the Project by the scheduled completion date plus any agreed extension under other conditions of the Agreement.

c. **IMMIGRATION LAW**

Contractor represents and warrants that all contractors and subcontractors working on this project for Owner will comply with all applicable federal and state immigration laws, and verify all employees' eligibility to work in this country. Further, Contractor shall ensure that all contractors and subcontractors will indemnify the Owner for any damages and legal fees that the Owner incurs as a result of Contractor's and/or subcontractor's failure to comply with applicable immigration laws.

d. PREVAILING WAGE RATES

(1) Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing rate of per diem wages for work of a similar character where the Project is located, as detailed in the "Minimum/Prevailing Wage Schedule" provided herein or in the Project Manual. Wages listed are minimum rates only. However, no claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein. Texas Government Code §2258, *et seq.*; Texas Labor Code §62.0512, *et seq.*

(2) Contractor shall forfeit, as a penalty to the Owner, \$60 for each laborer, worker or mechanic employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract Documents.

(3) Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

(4) In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety and minimum wages.

(5) If no "minimum wage schedule" is provided herein or in the Project Manual, the Contractor shall use the wage rates determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 USC Section 3141, which can be accessed on the internet at <https://beta.sam.gov/>, or determined by any local contractor association, whichever is less.

e. TIME.

(1) Time limits stated in the Contract are of the essence. By executing the Agreement the Contractor confirms that the amount of time or date selected for Final Completion, as set out in Paragraph 2(b), provides for a reasonable period for performing the Project. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Project is to be performed and correlated personal observations with requirements of the Contract.

(2) The Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion by the date selected for Final Completion.

(3) If the Contractor is delayed at any time in the commencement or progress of the Work by:

- (a) changes ordered in the Work by Owner;
- (b) fire, governmental actions, or adverse weather conditions documented in accordance with subparagraph 8.b above;

(c) an act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

(d) by other causes that the Contractor asserts, and Owner agrees may justify delay, then the date of Final Completion may be extended for such reasonable time as the Owner may determine.

(4) Claims relating to time shall be made in accordance with applicable provisions of subparagraph 8.b above and this Agreement does not permit the recovery of damages, including, without limitation, extended home office overhead expenses, general conditions, or other consequential damages by the Contractor for delay or disruption or for extensions of time as provided in the Agreement. Contractor agrees that the only possible compensation for any delay is an extension of time.

f. **NO ISRAEL BOYCOTT CERTIFICATION.**

To the extent required by law, Contractor certifies that during the term of this Contract, it does not boycott Israel and will not boycott Israel. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

g. **COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR A FOREIGN TERRORIST ORGANIZATION.**

In accordance with Texas Government Code, Chapter 2252, Subchapter F, Owner is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under Texas Government Code Sections 806.051, 807.051, or 2252.153. By execution of this Contract, Contractor certifies to Owner that it is not a listed company under any of those Texas Government Code provisions. Contractor hereby voluntarily and knowingly acknowledges and agrees that this Contract shall be null and void should facts arise leading the Owner to believe that the Contractor was a listed company at the time of this procurement.

h. **GOVERNING LAW.**

This Contract shall be governed by the law of the State of Texas. Venue for any legal action arising out of the Project shall be in a state court, as appropriate, in the county where the Owner's Administrative Offices are located.

i. **NO ASSIGNMENT.**

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

j. **WRITTEN NOTICE.**

Written notice shall be deemed to have been duly served if delivered in person or if delivered at or sent by registered or certified mail to the following:

If to Owner:

Jay McWilliams, Superintendent
Big Spring Independent School District
708 East 11th Place
Big Spring, TX 79720

and to the Owner's authorized representative at the address set forth above.

If to Contractor:

Javine West Texas LLC, dba Varitec Solutions
Attn: Justin Tubb
2405 114th Street
Lubbock, TX 79423

Contractor's authorized representative or, if a corporation, to an officer of the corporation and at the address to be provided by Contractor in writing.

k. **RIGHTS AND REMEDIES.**

Duties and obligations imposed by the Contract and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

l. **ENTIRE AGREEMENT.**

This Agreement and the additional documents identified and referenced herein represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

[signatures follow in next page]

This Agreement is entered into as of the day and year first written above and is executed in at least two original copies, one of which is to be delivered to the Contractor and one to the Owner.

OWNER:
BIG SPRING INDEPENDENT SCHOOL
DISTRICT

CONTRACTOR:
JAVINE WEST TEXAS LLC, dba
VARITEC SOLUTIONS

By: _____
(Signature)

By: _____
(Signature)

Jay McWilliams, Superintendent
(Title)

Justin Tubb
(Title)

EXHIBIT “A”
Contractor Certification

Introduction: Texas Education Code Chapter 22 requires service contractors to obtain criminal history record information regarding covered employees and to certify to the Owner that they have done so. Covered employees with disqualifying convictions are prohibited from serving at a school district.

Definitions:

Covered employees: All employees of a contractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students.

Disqualifying conviction: One of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

On behalf of Javine West Texas LLC, dba Varitec Solutions (“Contractor”), I certify that [check one]:

- None of Contractor’s employees are *covered employees*, as defined above. Or
- Some or all of Contractor’s employee are *covered employees*. If this box is selected, I further certify that:
 - (1) Contractor has obtained all required criminal history record information, through the Texas Department of Public Safety, regarding its covered employees. None of the covered employees has a disqualifying conviction. Contractor has taken reasonable steps to ensure that its employees who are not covered employees do not have continuing duties related to the contract services or direct contact with students.
 - (2) If Contractor receives information that a covered employee has a disqualifying conviction, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.
 - (3) Upon request. Contractor will make available for the District’s inspection the criminal history record information of any covered employee. If the District objects to the assignment of a covered employee on the basis of the covered employee’s criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance by Contractor with this certification may be grounds for contract termination.

Signature

Date

EXHIBIT "B"

SCOPE OF WORK

Project Description:

Varitec, under TIPS contract number **200201**, will perform the following building maintenance, repair, operations and equipment replacements:

Kentwood Elementary – HVAC Turnkey Install

The existing HVAC system at Kentwood is in very poor condition. Numerous problems have occurred with the indoor and outdoor units. This scope of work is to perform and install all work associated with M1 through M5, E1, and E2 in the construction set of drawings provided by the school district and engineer of record. The new system will cover all occupied classrooms, restrooms and the cafeteria. The custodial closet and mechanical rooms will not be conditioned spaces as they are not currently conditioned. The existing fan coils in the space and outdoor unit will be removed and disposed. Refrigerant piping will be insulated and jacketed (only if on the roof). This work will be done in acceptance to the local laws and codes. The work will bring the building HVAC system up to code regarding Outside Air and Electrical upgrades. The quote included all material, tools and labor for this project.

Equipment Data:

- 1 18 Ton VRV-IV-X -A (208-230V) with Hail Guard
- 1 22 Ton VRV-IV-X -A (208-230V) with Hail Guard
- 2 12 port Branch selector unit with isolation valves on all ports
- 4 FXAQ07 - Wall Mounted Unit
- 11 FXFQ36 - Round Flow Sensing Cassette with OA intake Kit
- 1 FXZQ07 - 4-Way Discharge Ceiling Cassette (2' x 2')
- 4 FXZQ12 - 4-Way Discharge Ceiling Cassette (2' x 2')
- 1 FXZQ18 - 4-Way Discharge Ceiling Cassette (2' x 2')
- 2 1200 CFM CEILING MOUNTED DUCT TYPE ERV
- 3 Lennox KGB RTUs
 - Qty. 1 2 Ton Rooftop Unit
 - Qty. 2 5 Ton Rooftop Unit
 - 208-230/3/60
 - DX cooling/Gas heat
 - 2" Standard Filters
 - Hinged Access Panels
 - 0-100% Enthalpy Economizer with Barometric relief
 - Hail guard (Fld)
 - Disconnect
 - Unpowered Convenience Outlet
 - 14" Flat roof curb (Fld)
- 23 new Navigation Remote Controller
- 1 iTM Front End
- 12 Supply diffuser
- 12 Return and Exhaust grilles
- 27 Dace flanged taps with dampers

NOTES:

Clarifications:

1. All work shall be performed in accordance with all applicable state and local codes and standards.
2. All controls work is also included in this cost. The system will be fully operational.
3. Performance Bond and TIPS contract fees included

Exclusions:

1. Taxes – all local, state and federal sales and use tax has been excluded
2. We exclude any identification and/or **removal of asbestos**, lead, mercury, etc. hazardous containing materials. If there is asbestos, the school district will be immediately notified and a course of action will be put into place to continue once the jobsite is deemed safe.
3. All Painting, Concrete Repair or Formed Concrete, or Concrete saw cut & removal, Wall and Ceiling Repair or replacement, Asbestos Abatement or Provisions, Basic Fire Suppression Materials and Methods, Wet-Pipe Fire Suppression Sprinklers, Sprinkler Systems, Structural Steel, Fire Stopping or Sound Caulking any other Caulking, Plumbing, Demo of hydronic piping and duct will remain in place, and Insulation on any existing duct

Install Target Date:

Due to the COVID pandemic, outdoor units are on 8 week lead time. Varitec can start work as soon as August 1 and prepare the building for the outdoor units to arrive. Varitec will coordinate with John Sparks and Jay McWilliams on this install.

Warranty:

Labor for all Equipment – 18 months
VRV – 10 years all parts

To: Board of Trustees
From: Jay McWilliams, Superintendent and John Sparks, Director of Maintenance
Subject: Consider Approval of Budget Amendment and Expenditures over \$150,000
Date: July 23, 2020

The proposed work includes the following:

Kentwood Elementary: Replace and upgrade the HVAC system at Kentwood Elementary. This project would replace the current HVAC with upgrades specified by Fincher Engineering, LLC. The entire project is quoted to cost \$541,670 and is attached for your review.

At this time, we need to consider a budget amendment by fund 199 and function 81 in order to account for the expenditures on the Kentwood campus

199-81 Increased by \$541,670

The total offset of \$541,670 would be from Fund Balance.

As required by the Purchasing and Acquisition policy CH (local), any single budgeted purchase of goods or services that costs \$150,000 or more shall require Board approval.

This purchase will meet Purchasing requirements by utilizing the TIPs (The Interlocal Purchasing System) COOP.

1. Recommendation: I recommend the Board of Trustees approve the expenditure from Javine West Texas LLC, dba Varitec Solutions for over \$150,000.

2. Recommendation: I recommend the Board of Trustees approve the above listed budget amendment.



Delivery Terms: FOB Factory

Payment Terms: Net 30 Days to Approved Credit

PROJECT: Big Spring HVAC Upgrades

July 20, 2020

Varitec Salesman: Justin Tubb

Customer: Jay McWilliams

JBS #:

Project: Big Spring ISD

Revision: 0

Contract # 200201

Varitec, in compliance with TIPS, is pleased to offer you the following equipment and install proposal at Kentwood Elementary at Big Spring ISD. Varitec received a contract under contract number 200201 for building maintenance, repair, operations and equipment replacements. Please see the proposal below in compliance with the standards and by laws of the TIPS purchasing program.

Kentwood Elementary – HVAC Turnkey Install

Scope of Work:

The existing HVAC system at Kentwood is in very poor condition. Numerous problems have occurred with the indoor and outdoor units. This scope of work is to perform and install all work associated with M1 through M5, E1, and E2 in the construction set of drawings provided by the school district and engineer of record. The new system will cover all occupied classrooms, restrooms and the cafeteria. The custodial closet and mechanical rooms will not be conditioned spaces as they are not currently conditioned. The existing fan coils in the space and outdoor unit will be removed and disposed. Refrigerant piping will be insulated and jacketed (only if on the roof). This work will be done in acceptance to the local laws and codes. The work will bring the building HVAC system up to code regarding Outside Air and Electrical upgrades. The quote included all material, tools and labor for this project.

Equipment Data:

- 1 18 Ton VRV-IV-X -A (208-230V) with Hail Guard
- 1 22 Ton VRV-IV-X -A (208-230V) with Hail Guard
- 2 12 port Branch selector unit with isolation valves on all ports
- 4 FXAQ07 - Wall Mounted Unit
- 11 FXFQ36 - Round Flow Sensing Cassette with OA intake Kit
- 1 FXZQ07 - 4-Way Discharge Ceiling Cassette (2' x 2')
- 4 FXZQ12 - 4-Way Discharge Ceiling Cassette (2' x 2')
- 1 FXZQ18 - 4-Way Discharge Ceiling Cassette (2' x 2')
- 2 1200 CFM CEILING MOUNTED DUCT TYPE ERV
- 3 Lennox KGB RTUs
 - Qty. 1 2 Ton Rooftop Unit
 - Qty. 2 5 Ton Rooftop Unit

- 208-230/3/60
- DX cooling/Gas heat
- 2" Standard Filters
- Hinged Access Panels
- 0-100% Enthalpy Economizer with Barometric relief
- Hail guard (Fld)
- Disconnect
- Unpowered Convenience Outlet
- 14" Flat roof curb (Fld)
- 23 new Navigation Remote Controller
- 1 iTM Front End
- 12 Supply diffuser
- 12 Return and Exhaust grilles
- 27 Dace flanged taps with dampers

Notes:

Clarifications:

1. All work shall be performed in accordance with all applicable state and local codes and standards.
2. All controls work is also included in this cost. The system will be fully operational.
3. Performance Bond and TIPS contract fees included

Exclusions:

1. Taxes – all local, state and federal sales and use tax has been excluded
2. We exclude any identification and/or **removal of asbestos**, lead, mercury, etc. hazardous containing materials. If there is asbestos, the school district will be immediately notified and a course of action will be put into place to continue once the jobsite is deemed safe.
3. All Painting, Concrete Repair or Formed Concrete, or Concrete saw cut & removal, Wall and Ceiling Repair or replacement, Asbestos Abatement or Provisions, Basic Fire Suppression Materials and Methods, Wet-Pipe Fire Suppression Sprinklers, Sprinkler Systems, Structural Steel, Fire Stopping or Sound Caulking any other Caulking, Plumbing, Demo of hydronic piping and duct will remain in place, and Insulation on any existing duct

Install Target Date:

Due to the COVID pandemic, outdoor units are on 8 week lead time. Varitec can start work as soon as August 1 and prepare the building for the outdoor units to arrive. Varitec will coordinate with John Sparks and Jay McWilliams on this install.

Warranty:

Labor for all Equipment – 18 months

VRV – 10 years all parts

Total Net Price (Not Including Tax).....\$541,670.00

To: Jay McWilliams, Superintendent, and Board of Trustees

From: Susan Bryan, Chief Financial Officer

Subject: Consider Resolution Approving the Terms and Conditions of an Interlocal Agreement with Region 10 Retirement Asset Management Services Cooperative

Date: July 23, 2020

On the following pages is the proposed Board Resolution approving the terms and conditions of an interlocal agreement between the District and Education Service Center Region 10 which sponsors the Retirement Asset Management Services Program (“RAMS”) authorizing the establishment or takeover of one or more plans. This resolution would establish a 457(b) Plan for the benefit of eligible employees.

Suggested Motion: I recommend that the Board approve the Board Resolution and Interlocal Agreement with Region 10 Education Service Center for Retirement Asset Management Services (RAMS) as presented.

**EDUCATION SERVICE CENTER REGION 10 RETIREMENT ASSET MANAGEMENT SERVICES (RAMS)
BOARD RESOLUTION**

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE BIG SPRING INDEPENDENT SCHOOL DISTRICT (“BOARD”) APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BETWEEN THE DISTRICT AND EDUCATION SERVICE CENTER REGION 10 WHICH SPONSORS THE RETIREMENT ASSET MANAGEMENT SERVICES PROGRAM (“RAMS”) AUTHORIZING THE ESTABLISHMENT OR TAKEOVER OF ONE OR MORE PLANS AS SELECTED BELOW.

WHEREAS, the BOARD of the Big Spring Independent School District (“DISTRICT”) has been presented a proposed Interlocal Agreement for one or more of the plans selected below, between Education Service Center Region 10 and the DISTRICT; and

WHEREAS, the DISTRICT, pursuant to the authority granted under Sections 791.001 to 791.029 of the Local Government Code, V.T.C.A., as amended, desires to participate in the described programs selected below sponsored by the Education Service Center Region 10 and in the opinion of the District participation in this program will be highly beneficial to the District and its employees; and

WHEREAS the DISTRICT is eligible to sponsor the plans selected.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE DISTRICT:

- (1) The Terms and Conditions of the Interlocal Agreement to join the ESC Region 10 Cooperative having been reviewed by the BOARD and found to be acceptable and in the best interests of the District and its employees are hereby in all things approved; and (mark all applicable choices)
- (2) (a) The BOARD hereby establishes a 457(b) Plan for the exclusive benefit of the eligible employees of the District; *or*
(b) The BOARD has a previously established 457(b) plan and hereby adopts the ESC Region 10 457 Cooperative Master Plan Document, agrees to invest the Plan funds in the ESC Region 10 457 Cooperative Trust and appoints the ESC Region 10 and the ESC Region 10 457 Cooperative Investment Advisory Committee to act on the District’s behalf in all matters involving the Plan, with the exception of specific provisions elected by the DISTRICT regarding its Plan effective _____, 2020; and/or
- (3) (a) The BOARD hereby establishes a 457(b) FICA Alternative Plan for the exclusive benefit of the eligible employees of the District; *or*
(b) The BOARD has previously established a 457(b) FICA Alternative Plan and does hereby adopt the ESC Region 10 457(b) FICA Alternative Plan Document, the ESC Region 10 457(b) FICA Alternative Plan Trust and appoints the ESC Region 10 Investment Advisory Committee to act on the District’s behalf in all matters involving the Plan and Trust, with the exception of specific provisions elected by the DISTRICT regarding its Plan effective _____ 2020; and/or
- (4) (a) The BOARD hereby establishes the 401(a) Teacher/Employee Retention and Recruitment Plan (“TERRP”) for the exclusive benefit of the eligible employees of the District; *or*
(b) The BOARD has previously established a 401(a) defined contribution plan for the DISTRICT and does hereby adopt the TERRP 401(a) Retirement Plan Document, the 401(a) TERRP Trust and appoints the ESC Region 10 Investment Advisory Committee to act on the District’s behalf in all matters involving the Plan and Trust, with the exception of specific provisions elected by the DISTRICT regarding its Plan effective _____; and/or
- (5) The BOARD does hereby adopt the Interlocal Agreement with Education Service Center Region 10 for 403(b) Third Party Administration Services; and/or
- (6) The BOARD hereby instructs that the assets of the selected plans above (if any) in which the applicable ESC Region 10 Trust was selected be moved from the current custodian or trustee to the applicable ESC Region 10 Trust at Matrix Trust as soon as is practical and that the administration of the Plan be moved from the current administrator to TCG Administrators, the third party administrator for the ESC Region 10 RAMS programs; and/or

- (7) _____ The BOARD does hereby adopt the Interlocal Agreement with Education Service Center Region 10 for Financial Wellness Services at the fee shown in such Interlocal Agreement; and/or
- (8) The BOARD hereby appoints the _____ (Job Title or Position), or his/her successor or his/her designee, as DISTRICT Plan Administrator, and further authorizes him/her to implement and manage the DISTRICT'S participation in the applicable Plans under the direction of the BOARD; and
- (9) The District's Plan Administrator is hereby authorized to execute the applicable ESC Region 10 RAMS interlocal agreements, contracts and other legal documents on behalf of the DISTRICT and to take whatever additional actions that are necessary to set up and maintain the participation of the DISTRICT in the applicable ESC Region 10 RAMS programs and to maintain compliance with relevant regulations issued or as may be issued.
- (10) This Resolution shall be effective immediately upon its passage.

Duly PASSED and APPROVED by the BOARD this _____ day of _____, 2020

Attest:

By: _____
Title: Board President

By: _____
Title: Board Secretary

**INTERLOCAL AGREEMENT
Education Service Center Region 10**

Contracting Parties

Education Service Center Region 10 (ESC Region 10)

and

Big Spring Independent School District (the "District")

This agreement is effective September 1, 2020 ("Effective Date") and shall remain in effect for the period beginning with the Effective Date and twelve (12) months thereafter ("Term"). This agreement shall continue unchanged for successive twelve month periods following the Term unless either party gives written notice to the other party of the intent to terminate prior to ninety (90) days before the end of the Term.

Statement of Services to be Performed: Provide a 457(b) Retirement Savings Plan ("Plan") to the District through the ESC Region 10 457 Cooperative and Master Plan.

Authority for such services is granted under sections 791.001 through 791.015 and 791.025 of the Government Code, V.T.C.A. as amended.

Role of ESC Region 10

1. Provide for the organizational and administrative structure of the program, including a Trust for investment of Plan funds, oversee the investments of the Trust, and provide a Plan document to the District.
2. Provide for an Investment Advisor to oversee the investments offered in the Cooperative and Master Plan and to accept fiduciary responsibility for the selection of the investments offered to employees participating in the Cooperative and Master Plan.
3. Provide staff time necessary for efficient operation of the program.
4. Initiate and implement activities related to the vendor(s) selection process.
5. Facilitate the delivery of the services purchased.

Role of the Member School District:

1. Commitment to participate in the program as indicated by an authorized signature in the appropriate space below.
2. Designate a contact person for the cooperative.
3. Commit to purchase the services designated herein when it is in the best interest of the District.
4. Accept the services from vendor(s) in accordance with standard procedures of the District.

