

# **ALIEF INDEPENDENT SCHOOL DISTRICT GENERAL TERMS AND CONDITIONS**

## **1. CONTRACT FOR PURCHASE**

This Agreement ( "Agreement") constitutes a binding contract between Alief Independent School District ("Alief ISD" or "District") and the Vendor ("Vendor"), having submitted a proposal in response to a procurement solicitation issued by Alief ISD and whose proposal has been accepted and awarded by Alief ISD, to furnish the goods and/or services specified on the face of the Agreement. This Agreement shall govern each purchase by Alief ISD from Vendor and is part of the terms and conditions of each purchase order issued in connection with this solicitation.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY VENDOR FORM, PROPOSAL AND/OR OTHER DOCUMENTATION, THE TERMS AND CONDITIONS OF THE AGREEMENT AS INTEGRATED HEREIN SHALL BE CONTROLLING IN ALL INSTANCES. No pre-published terms on Vendor's order acknowledgments, invoices, or other forms shall have any force or effect. Acceptance of the Vendor's goods and/or services does not equal acceptance of any of the terms and conditions or other contractual provisions which may be stated in the Vendor's forms, proposals, and/or other documentation.

Notwithstanding anything to the contrary contained in these terms and conditions, upon the District's acceptance of a proposal, the Vendor and the District will have entered into a binding contract. A solicitation/proposal does not become a contract unless and until it is accepted by Alief ISD after all necessary approvals, including any required approval by the Alief ISD Board of Trustees. The Agreement is enforceable from the time of the District's acceptance, without regard to the time of notification to the Vendor of such acceptance.

All costs related to the preparation and submission of a proposal shall be paid by Vendor. Issuance of this procurement solicitation does not commit Alief ISD, in any way, to pay any costs in the preparation and/or submission of any proposal. Alief ISD assumes no financial responsibility for any costs incurred by prospective vendors in developing and submitting a proposal or any amendments or addenda, participating in any pre-proposal conferences, participating in any negotiation sessions or discussions, or any other costs incurred by prospective vendors prior to award of an Agreement pursuant to this procurement solicitation.

Purchases will be put into effect in the form of an Alief ISD purchase order after the Agreement has been awarded. Alief ISD will not be responsible for any goods delivered or services performed without a purchase order, signed by an authorized representative of the Alief ISD Purchasing Department.

Under no circumstances is the amount of this Agreement to be exceeded without prior approval of the Superintendent or designee, after any necessary approvals from Alief ISD's Board of Trustees. Alief ISD's purchase order number must appear on all invoices, delivery memoranda, bills of lading, packages, and correspondence. Vendor shall address all communication (excluding invoices) concerning this Agreement to the Alief ISD buyer ("Alief ISD Buyer") at the address or phone number provided in the procurement solicitation

## **2. ENTIRE AGREEMENT**

This Agreement; the terms and conditions specified in Alief ISD's procurement solicitation/cooperative contract ("RFP") (if any); any attached and incorporated addenda, exhibits, and/or forms; the Alief ISD Bid Attributes/Vendor Packet (including all certifications, federally required language, and required forms referenced included therein) (hereinafter "Bid Attributes"); and the portions of Vendor's proposal submitted in response to the RFP that were accepted by Alief ISD represent the basis for Vendor to deliver the required goods and/or services. In the event of a conflict or inconsistency between or among the documents that form the entire agreement, the following order of precedence shall control: (1) This Agreement; (2) the Bid Attributes; (3) the RFP (if any); (4) any attached and incorporated addenda, exhibits, and/or forms; and (5) the portions of Vendor's proposal submitted in response to the RFP that were accepted by Alief ISD. This Agreement supersedes all prior offers, negotiations, exceptions and understandings, whether oral or in writing.

## **3. NON-APPROPRIATION**

Renewal of this Agreement or continuation beyond the current fiscal year, if any, will be in accordance with Texas Local Government Code § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Agreement or obligation imposed on Alief ISD by this Agreement, Alief

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ISD shall have the right to terminate this Agreement without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of Alief ISD if it is determined by Alief ISD, in Alief ISD's sole discretion, that there are insufficient funds to extend this Agreement. The parties agree that this Agreement is a commitment of Alief ISD's current revenue only. Notwithstanding anything to the contrary in this Agreement, the District is obligated to make payments only as approved each year by the District's Board of Trustees. The District's Board of Trustees retains the right to terminate this Agreement at the expiration of each budget period of the District. To the extent that the District will use federal grant funds to fulfill its obligations under this Agreement, Vendor acknowledges that federal funds will be used to pay for all or a portion of funds due under this Agreement and that this Agreement is only effective upon receipt of the Notice of Grant Award ("NOGA") by the District from the awarding agency. As such, if the District does not receive sufficient funding for the services provided in this Agreement, the District may terminate this Agreement without penalty or further obligation to Vendor, at any time upon written notice to Vendor.

#### **4. REQUESTS FOR EXPLANATION/INTERPRETATION**

Any explanation desired by a prospective vendor regarding the meaning or interpretation of any part of the proposal documents must be requested in writing to the Alief ISD Buyer identified in this solicitation at least seven (7) Alief ISD business days prior to the date set to receive proposals, in order to allow a response to reach all prospective vendors before the submission of their proposals. Any Alief ISD response, interpretation, correction, approval, supplemental instruction or change to the proposal documents will be made in the form of a written addendum and will be posted at the following location: [www.aliefisd.ionwave.net](http://www.aliefisd.ionwave.net). Sole authority for issuing addenda shall be vested in the Alief ISD Purchasing Office. All interpretations and/or clarifications considered necessary by and approved by the District in response to a prospective vendor's written request will be issued by such addenda; verbal requests for clarification or additional information will not be addressed.

Receipt of any addenda issued by the District shall be acknowledged by all prospective vendors with their proposal submissions. The District reserves the right to reject any proposal due to its failure to incorporate addenda, and the District further reserves the rights: to waive any and/or all formalities, irregularities, and/or technicalities; to be the sole judge of quality and suitability; and to accept any proposal and/or to reject any or all proposals or part(s) of a proposal, without reason or cause. The issuance of the procurement solicitation in no way obligates Alief ISD to award, enter into an agreement, or purchase any goods and/or services.

#### **5. ITEM SPECIFICATIONS**

By submitting a proposal, Vendor agrees to provide the goods/services in full accordance with the specifications outlined in the solicitation and this Agreement, as requested by Alief ISD, notwithstanding existing material and/or labor market conditions. Vendor shall examine and be familiar with all requirements and obligations of the entire solicitation. Failure to do so will be at the Vendor's risk. The District does not typically restrict items procured to a given manufacturer brand, make, model, provider, or other such limitation, however, if such information is provided, it is because these products/services have certain features that are desirable, and the term "or equal" if not inserted shall be implied (as applicable). The use of a given manufacturer's specifications by the District is to be considered a representation of the minimum standard of quality and to aid in identifying the type of item requested; the specified article or material shall be understood as indicating type, function, minimum standard of design, efficiency and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design and efficiency (as applicable). The District makes every effort to encourage the acquisition of recycled materials to the maximum extent practicable and gives preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. A product shall not be disqualified on the basis of post-consumer content alone.

#### **6. RELATIONSHIP OF PARTIES**

It is the intention of the parties that Vendor be an independent contractor and not an employee, agent, joint venturer, or partner of the District. Alief ISD and Vendor acknowledge that they do not have a continuing relationship, and that this Agreement is intended only to create a limited relationship for the specific purposes of providing the goods and/or services referenced in this Agreement. Neither party shall have any power or authority to bind or commit, or to assume or create any obligation or responsibility on behalf of, the other party in any respect, contractually or otherwise, to any third party. In the event this Agreement requires the Vendor's performance of

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services by Vendor's employees, or persons under contract to Vendor, to be done on Alief ISD property, the Vendor agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Alief ISD. In no event shall either party, or any of its respective officers, agents, or employees, be considered the officers, agents, or employees of the other party. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee, a joint venture, merger, or any business partnership between the District and either Vendor or any employee or agent of Vendor. Vendor agrees that the District has no responsibility for any conduct of any of Vendor's staff, participants, visitors, employees, agents, representatives, personnel, contractors, subcontractors, invitees, or licensees. Vendor assumes full responsibility for the actions of its staff, participants, visitors, employees, agents, representatives, personnel, contractors, subcontractors, invitees, and licensees while performing any services incident to this Agreement and shall remain solely responsible for their supervision, daily direction and control, payment of salary (including withholdings), workers' compensation, disability benefits, and like requirements and obligations. As an independent contractor, Vendor will be solely responsible for determining the means and methods for performing the Services and shall furnish all tools, materials, transportation, and personal incidentals necessary in the performance of the Services. Vendor shall be responsible for any and all applicable social security and personal income taxes that may become due as a result of any payments made by the District hereunder and Vendor shall indemnify and hold the District harmless in this regard.

### **7. SUBCONTRACTORS**

The Vendor shall not subcontract services provided in this solicitation without prior written approval by Alief ISD. If the District gives written permission for Vendor to use subcontractor(s) in the performance of any part of this Agreement, Vendor shall ensure that each subcontractor complies with all provisions of this Agreement and shall be fully responsible to Alief ISD for all acts and omissions of the subcontractors, just as Vendor is responsible for Vendor's own acts and omissions. Vendor shall require each subcontractor to maintain and to furnish Vendor with satisfactory evidence of Workers Compensation, Employer's Liability, and such other forms and amounts of insurance which Vendor deems reasonably adequate. Vendor shall remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of all goods and services under this Agreement. Nothing in this Agreement shall create for the benefit of any such subcontractor any contractual relationship between Alief ISD and any such subcontractor, nor shall it create any obligation on the part of Alief ISD to pay or to see to the payment of any moneys due any such subcontractor except as may otherwise be required by law.

### **8. TERMINATION**

Termination of this Agreement will take place under the following conditions:

- .1 Termination by Alief ISD, if the Vendor refuses or fails to comply, or proceeds in a manner that does not comply, with the Agreement, or otherwise breaches any provision of the Agreement, and fails to cure the default as set forth below.
- .2 Termination by Alief ISD, if the Vendor does not carry out the provisions of this Agreement in its true intent and meaning as specified in the scope of work, and fails to cure the default as set forth below.
- .3 Termination by Alief ISD, if the Vendor does any of the following and fails to cure the default as set forth below: fails to make progress; fails to provide the goods or perform the services within the time period specified or any written extension thereof; breaches any provision of the Agreement, the procurement solicitation, and/or a purchase or work order; fails to make payment(s) owed; or defaults in whole or in part.
- .4 Termination by Alief ISD, if the Vendor charges increased rates that are not agreed to in advance or as specified herein.
- .5 Termination by Alief ISD, if the Vendor becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings, or makes an assignment for the benefit of creditors.
- .6 Termination by Alief ISD, if the Vendor is in violation of any federal, state, or local law.
- .7 Termination by Alief ISD due to budgetary requirements, including, but not limited to, as set forth in the section of these terms and conditions entitled "Non-Appropriation."
- .8 Termination by Either Party for Convenience - Unless specifically stated otherwise in the procurement solicitation, this Agreement may be terminated for any reason, with or without cause, by either party by giving thirty (30) business days' written notice to the other party. In the event of termination by Vendor, at Alief ISD's sole discretion, Alief ISD may insist that the effective date of termination will be the day after

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the end of the District semester or school year during which the 30-day period expires, unless otherwise mutually agreed by the parties in writing.

In the event of a breach or default of the Agreement and/or the procurement solicitation by Vendor, Alief ISD reserves the right to enforce the performance of the Agreement and/or the procurement solicitation in any manner prescribed by law or deemed to be in the best interest of Alief ISD. Alief ISD's right to require strict performance of any obligation in the Agreement will not be affected by any previous waiver, forbearance, or course of dealing.

Upon Vendor's default of obligation to the Agreement, the Vendor will be served notice to provide satisfactory compliance to the Agreement without penalty. If the Vendor neglects or refuses to follow such notice and fails to cure the default within ten (10) business days, Alief ISD will have the right (without limiting any other rights or remedies that it may have in the Agreement or by law) to terminate the Agreement with five (5) calendar days' prior written notice to Vendor. Alief ISD will then be relieved of all obligations, except to pay for Vendor's prior acceptable performance as set forth below. In the event of Vendor's default, Alief ISD is expressly authorized to obtain the goods and/or services that would have been provided by Vendor under this Agreement from an alternative source. Vendor shall be held liable to Alief ISD for all losses, costs, and/or expenses (including those exceeding the Agreement price) sustained by Alief ISD as a result of Vendor's failure to conform to this Agreement, including, but not limited to, those losses, costs, and expenses that Alief ISD incurs in completing or procuring the services and/or goods as provided for in the Agreement. In the event the Agreement is terminated, Alief ISD reserves the right to award the Agreement to another Vendor at its sole discretion, and/or to obtain comparable goods and/or services elsewhere and either deduct the costs of obtaining such services from any amount owed Vendor or Vendor shall reimburse the District for such costs incurred by the District.

In the event of early termination, the District will make payment only for goods and services rendered and accepted by the District through the effective date of the Agreement's termination, at a cost not exceeding the Agreement rate and subject to any claims, costs and expenses incurred by Alief ISD as a result of Vendor's default. The District will be responsible for payment for only those goods and services that have been accepted by the District up to the termination date. The District is entitled to a pro-rata refund for any goods and/or services for which the District has paid but which have not yet been provided by Vendor or accepted by the District.

In the event this Agreement is terminated because of a violation or breach of the Agreement's terms by the Vendor, the District shall be entitled to all administrative, contractual, and legal remedies, including sanctions and penalties.

Vendor agrees that Alief ISD shall not be liable for damages in the event that Alief ISD declares Vendor to be in default or breach of this Agreement and/or the procurement solicitation. Vendor further agrees that upon termination of the Agreement for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or vendor.

### **9. QUANTITIES**

Any quantities listed in a procurement solicitation represent estimated usage distributed across one or more order(s). Purchases will be on an "as needed basis" for the District throughout the term of the Agreement. All purchases shall be subject to these terms and conditions, as well as the terms and conditions of the procurement solicitation and/or purchase order. If Vendor wishes to restrict shipment of individual items to a minimum quantity, such restriction must be noted in vendor's proposal.

Any Agreement resulting from this solicitation is non-exclusive and shall be awarded with the understanding and agreement that it is for the sole convenience of Alief ISD. There is no guaranteed amount of business, expressed or implied, to be purchased, or contracted for by Alief ISD. However, the Vendor shall furnish all required goods and/or services to the District at the stated price, when and if required by Alief ISD. Alief ISD is free to have multiple contracts for the awarded goods and/or services and may initiate other procurement solicitations or purchasing activity with other vendors at any time, in Alief ISD's sole discretion. The District expressly reserves the right to procure and/or purchase any goods and services from other sources and/or by other means.



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### **10. DELIVERY TERMS**

- .1 All items provided as part of the Agreement shall be delivered unopened, in factory-sealed cartons. The Alief ISD Purchase Order Number must be clearly marked on the face of each carton corresponding to that order number. District personnel may refuse deliveries not marked as specified. All deliveries shall include a packing slip with the District Purchase Order Number plainly printed on it.
- .2 All purchase orders must be boxed separately. District personnel may refuse multiple orders combined within a single box. Cases must be labeled clearly with quantity and product contained therein.
- .3 Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after Alief ISD's first use of the goods and/or services, Alief ISD reserves the absolute right, at all reasonable times and places, to inspect, test, and reject any and/or all goods and/or services, in whole or in part, furnished by Vendor which do not comply with and/or meet all specifications and/or requirements of this Agreement and the procurement solicitation, at the Vendor's sole expense. This right shall exist even if payment has already been made by Alief ISD to the Vendor. Goods or services which, in the sole opinion of Alief ISD, fail to conform to the required specification(s) or standard(s) may be considered non-conforming.
- .4 The obligation of Vendor to meet the delivery dates, specifications, and quantities set forth in the Agreement is of the essence of this Agreement. If, at any time, Vendor believes it may be unable to comply with the delivery or completion schedules, then Vendor must notify Alief ISD's Purchasing Department immediately in writing of the probable length of any anticipated delay and the reasons for it. In the event of such notification or of an actual failure by Vendor to comply with the delivery or completion schedules, Alief ISD may, in addition to all other remedies, require Vendor, at Vendor's expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay.
- .5 Vendor assumes all liability for delivering goods that do not meet the specification(s) and standard(s) specified on the face of the Agreement. Any non-conforming goods and/or services which are delivered to Alief ISD are accepted under a "reservation of Alief ISD's rights" to contest, dispute, request offsets, reject, or return the non-conforming goods and/or services, in whole or in part. Any tender of goods or performance of services by Vendor which are non-conforming as to the quality, quantity, or the delivery schedule (including, but not limited to, goods found to be defective, damaged in shipment, or not as ordered) shall constitute a breach of this Agreement, and Alief ISD shall have the absolute right to reject the goods and/or services, in whole or in part. In the event that Alief ISD does not accept any goods and/or services which have been submitted to Alief ISD, Alief ISD is entitled to any and all remedies that are provided by law. In addition to the U.C.C. allowed contract by contract right of setoff, Alief ISD is entitled to a "party by party" right of set off. Alief ISD is not required to mitigate its damages in order to obtain the relief for any breach of contract remedies available to it. In addition, Alief ISD has the right to do any or all of the following, in Alief ISD's sole discretion:
  - a. hold the non-conforming goods and/or services for a reasonable period at Vendor's risk and expense pending a determination to accept or reject any or all thereof;
  - b. return the non-conforming goods and/or services to Vendor at Alief ISD's election and at Vendor's risk and expense for replacement or correction, in which case Vendor shall use best efforts to replace any non-conforming goods and/or services at Vendor's risk and expense;
  - c. accept the non-conforming goods and/or services subject to an equitable price reduction;
  - d. replace or correct the non-conforming goods and/or services and charge to Vendor the cost occasioned to Alief ISD thereby;
  - e. recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by Alief ISD as a result of the holding, return, replacement, correction, reductions, or rejections of non-conforming goods and/or services; and/or
  - f. terminate the Agreement. These remedies do not limit other remedies available to the District in this Agreement or otherwise available by law.
- .6 All deliveries shall be to the site(s) specified on the purchase order. With the exception of shipments to the Central Distribution Warehouse located at 12101 7<sup>th</sup> Street, Houston, TX 77072), Alief ISD has no facilities for off-loading deliveries. Unless specifically stated otherwise, all shipments MUST include "inside delivery." "Dock Side" deliveries and/or deliveries requiring buyer unloading, except if specifically stated on the Agreement and applicable purchase order, will be refused.
- .7 Items shall be delivered in cartons of such quality to facilitate the safe and easy transport of the enclosed goods in accordance with accepted trade practices. Any item purchased pursuant to this proposal that is

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found to be defective, damaged in shipment, or not as ordered shall be accepted for return with postage paid by Vendor. A credit shall be promptly issued by the Vendor to the District's form of payment, and replacements re-billed when shipped.

- .8 When a delivery is to be made to an Alief ISD campus: (a) such delivery shall be made between the hours of 8:30 a.m. and 2:00 p.m., Monday through Friday, except on school holidays and (b) such delivery shall be made and goods shall be placed inside the campus building in the designated room(s) at no additional charge. ALIEF ISD CANNOT AND WILL NOT ACCEPT TAILGATE DELIVERY AT A SCHOOL ENTRANCE UNLESS SPECIFIED OTHERWISE ON THIS AGREEMENT AND THE APPLICABLE PURCHASE ORDER.
- .9 If the Vendor fails to deliver the quality or quantity of items ordered by the promised delivery date at the prices specified in this proposal, Alief ISD reserves the right to purchase the specified item(s) elsewhere. Increase in price and the cost of shipping of such items shall be charged to the Vendor.
- .10 Unless specified otherwise in these terms and conditions, all orders are to be completed within thirty (30) calendar days from date of order. All unshipped items on any purchase order will automatically be cancelled thirty (30) calendar days after date of order unless prior approval by Alief ISD's Purchasing or Central Distribution Department has been obtained. Shipments initiated after such date may not be accepted.
- .11 Failure to meet any of the requirements of this section entitled "Delivery Terms" will be considered a default by Vendor. In case of default on delivery orders, the District reserves the right to terminate the Agreement, to purchase on the open market, and suspend future business with Vendor. A history of failure to meet the terms of delivery may affect Vendor's eligibility on future requests for proposal, in the District's sole discretion.

### **11. COMPLIANCE WITH APPLICABLE LAW AND DISTRICT REQUIREMENTS**

Vendor agrees to comply and certifies compliance with, on behalf of itself and any subcontractors (if approved by the District in accordance with this Agreement), and their respective employees, agents, and representatives, all federal, state, and local laws, acts, rules, regulations, and ordinances, as applicable, including, but not limited to the Education Department General Administrative Regulations ("EDGAR"), 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77 and 81, and Texas Government Code Chapter 2258. If applicable, Vendor certifies compliance with all provisions, laws, acts, regulations, rules, and ordinances as detailed in the "Contract Provisions for Non-Federal Entity Contracts under Federal Awards" in Appendix II to 2 C.F.R. Part 200, which is incorporated by reference herein. Vendor further certifies compliance with all applicable provisions, laws, acts, regulations, rules, and ordinances, including but not limited to those referenced in the District's Bid Attributes completed by Vendor, which is incorporated by reference herein. Further, Vendor agrees to and shall comply with all rules, regulations, policies, procedures, and other requirements of the District and the school campus(es) on which any work is to be performed under this Agreement. Vendor shall indemnify and hold Alief ISD harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor's obligations under this provision.

### **12. SITE RULES**

Should a purchase order or Agreement specify delivery/work which requires visitation to an Alief ISD facility, the Vendor shall be responsible to the District for all acts and omissions of the Vendor's agents and employees, any Vendor subcontractors and their agents and employees, and any other persons or entities performing portions of the work for, or on behalf of, the Vendor or any of its subcontractors, including, but not limited to, strict adherence to the following site rules:

- .1 No foul language and/or behaviors, including, but not limited to, the use of profane and/or offensive language.
- .2 Keep the premises free from accumulation of waste, materials, or rubbish caused by the work under this Agreement at each site. Upon completion of the work, and prior to the final inspection, have the premises in a neat and clean condition.
- .3 All areas of Alief ISD property, other than the defined area for performance of this Agreement, shall be off limits to Vendor's forces, unless their work assignment specifies otherwise.

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- .4 Vendor shall require all workers, whether Vendor's own forces or the forces of Vendor's subcontractors, to park their personal motor vehicles on Alief ISD property only in the parking places designated by the Alief ISD campus principal or other facility administrator.
- .5 The possession or use of alcohol, illegal drugs, controlled substances, tobacco, and e-cigarette or e-vape products is strictly prohibited.
- .6 Vendor shall enforce Alief ISD's harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Vendor's employees, subcontractors, and all other persons carrying out the performance of this Agreement. Vendor shall require all workers, whether Vendor's own forces or the forces of Vendor's subcontractors, while on Alief ISD's property, to refrain from carrying or possessing weapons and to refrain from engaging in any inappropriate interactions of any nature whatsoever with Alief ISD's students or employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Alief ISD's students or employees. The Vendor shall further ensure that no on-site fraternization shall occur between personnel under the Vendor's and its subcontractors' direct or indirect supervision and Alief ISD's students or employees or the general public. Sexual harassment is strictly forbidden.
- .7 Vendor shall require all workers, whether Vendor's own forces or the forces of Vendor's subcontractors, while on Alief ISD's property, to refrain from committing any criminal conduct.
- .8 All workers should be clothed modestly with no close-fitting, sleeveless, or low-cut attire. Vendor shall require adequate and appropriate dress, including wearing shirts at all times and "badging" of Vendor's employees, subcontractors, and all other persons carrying out the performance of the Agreement on Alief ISD property for identification. Vendor shall ensure that all workers, whether Vendor's own forces or the forces of Vendor's subcontractors, wear identification tags on the front of their persons during all times that they are on Alief ISD property. Such identification tags shall contain a current photograph and the worker's name in a typeface large enough to be seen from a reasonable distance. Vendor shall furnish to Alief ISD (and update, as appropriate) photo identification of all workers and employees.
- .9 No workers with a history of felony convictions or warrants (See "Ch. 22 Criminal History Records Contractor Certification: Contractor/Subcontractor Employees" within Alief ISD's Bid Attributes).
- .10 Take all precautions necessary for the safety of, and provide protection to prevent damage, injury or loss to all persons, including all employees on the project, the District's employees and students, third parties (including but not limited to guests, invitees, and the like), and all other persons who are on District property or otherwise may be affected thereby, all the work and all materials to be incorporated therein, whether in storage on or off the site and all property at the site and adjacent thereto including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and any other Alief ISD property. All services are performed entirely at Vendor's risk. In the event of loss, damage, or destruction of any property owned by or loaned by Alief ISD that is caused by Vendor or Vendor's representative, agent, employee, contractor, or subcontractor, Vendor shall indemnify Alief ISD and pay to Alief ISD the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of Alief ISD's determination of the amount due. If Vendor fails to make timely payment, Alief ISD may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by Alief ISD.
- .11 A competent Vendor supervisor or representative who understands the full scope of the work shall be on site at all times.
- .12 Alief ISD use of its property, including but not limited to for school purposes and administrative purposes, shall at all times have priority over the Vendor's use/service/etc., regardless of whether Alief ISD's use was scheduled first in time. In the event of a conflict between Alief ISD's use of its property and Vendor's performance of this Agreement, Vendor's performance shall be rescheduled to another time as mutually agreed upon by the parties.
- .13 Any work that may interfere with school activities must be authorized in writing in advance by Alief ISD's Purchasing Department. A management plan will be devised to minimize the effect of the interference.
- .14 No work within the confines of a secured building will be allowed without at least one designated Alief ISD employee present. The Vendor must pay Alief ISD in advance for the cost of having an employee present at a building for after-hours work. Doors shall not be propped open.



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- .15 All Vendors and their employees and agents (including any Vendor subcontractors and their employees and agents) must be cleared in advance in each District building's main front office/receptionist area before entry into any Alief ISD building via the Raptor System. This system requires a driver's license or other state-issued identification, and will run a check to determine whether the individual is clear to enter the building, and then prints a custom badge. Visitors are not allowed on campuses without this custom badge.
- .16 Access to individual classrooms during instructional time for the performance of this Agreement shall be permitted only with the campus principal's and teacher's approval, and such visits shall not be permitted if their duration or frequency interferes with the delivery of instruction or disrupts the normal classroom environment.
- .17 Solicitors are not permitted to call at District schools without prior written approval from the office of the Alief ISD Superintendent or designee.

Any employee of the Vendor or a Vendor subcontractor who is found to have engaged in conduct prohibited by the aforementioned Site Rules shall be subject to appropriate disciplinary action by the Vendor, including immediate removal from Alief ISD property, and, in Alief ISD's sole discretion, permanent removal from the assignment to perform this Agreement or all work on any of Alief ISD's property. Repeated removal of Vendor's or Vendor's subcontractors' forces, or one serious infraction, shall constitute a material breach of this Agreement.

### **13. EDUCATIONAL RECORDS**

Vendor agrees that Vendor and its employees, agents, and/or representatives may receive access to student information for certain students of the District, pursuant to this Agreement. Vendor shall secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations, including but not limited to all privacy laws. Vendor understands that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information, and Vendor agrees to abide by FERPA rules and regulations, as applicable. Pursuant to the FERPA, Vendor must protect the confidentiality of District student records and shall not release any information without written consent from the District student's parent/guardian or eligible student unless required to do so by applicable law. Vendor further acknowledges that to the extent Vendor, including but not limited to, Vendor's staff, employees, and/or representatives, receives confidential District student information during the performance of duties under this Agreement, Vendor is considered a "school official" in accordance with FERPA and shall not disclose confidential student information or education records except as otherwise permitted by applicable law. Vendor shall require its employees and other agents to execute written agreements requiring that such information be kept confidential. The Parties agree to enter into a Data-Sharing Addendum in the event confidential student information is to be shared, as required by applicable law. Vendor and its employees/ representatives shall at all times abide by applicable laws, including FERPA and the Health Insurance Portability and Accountability Act (HIPAA). Vendor must destroy any student information received from the District when no longer needed for the purposes of the Agreement. Vendor shall immediately provide notice to the District of any violation of the terms of this section. Vendor shall be solely responsible for any breach of the obligations of this section by any of its employees, agents, representatives, or subcontractors or their employees, agents, or representatives.

### **14. DISTRICT'S CONFIDENTIAL INFORMATION**

In the course of performing duties under this Agreement, Vendor may view, obtain, or have access to financial, accounting, statistical, personnel, and other information of a confidential nature concerning students and schools being served by the District and employees of the District. All such information is confidential and shall not be disclosed, directly or indirectly, to any person other than authorized officials of the District, either during or after the effective period of this Agreement. Vendor acknowledges that the District would be irreparably injured if Vendor were to disclose such information to third parties not entitled to receive such information or to misappropriate such confidential information for Vendor's own purposes or benefit and that money damages would not compensate the District for such irreparable injury.

### **15. PRICING**



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- .1 All unit prices shall be F.O.B. Destination, Freight Prepaid and Allowed. Alief ISD may specify various and different locations within the District for "destination" during the term of the Agreement, and Vendor's prices should include allowances for such freight contingencies. Freight charges are the full responsibility of the Vendor, and pricing proposed must be fully inclusive of shipping, handling, freight, and/or delivery charges. If goods are not shipped in accordance with Alief ISD's directions and the instructions set out in the Agreement, the Vendor shall pay to Alief ISD any excess cost incurred by District as a result.
- .2 Invoices for awarded line items shall not reflect additional shipping charges. Invoices shall include any new/updated product numbers/models to the item(s) specified. All prices in Vendor's proposal shall be firm for the term of this Agreement.
- .3 Request for Proposals (RFPs) may be negotiated; however, Vendor's pricing should be submitted as the Vendor's best and final offer.
- .4 Alief ISD accepts Vendor's price(s) as recorded on Vendor's bid/proposal and on this Agreement but reserves the right to cancel a purchase order if the prices are to be increased prior to the delivery of goods or the completion of services. The prices specified on the face of the Agreement must be current and shall remain firm until Alief ISD has processed the Vendor's invoice, or until the goods and/or services have been accepted by Alief ISD, whichever is later. The title to any and all goods, products, merchandise, materials, and/or services that are provided to Alief ISD shall pass to Alief ISD upon acceptance of the good or payment of the applicable invoice, whichever is later.
- .5 No separate charges, except those clearly recorded on Vendor's bid/proposal and on this Agreement, can or will be allowed or paid under any circumstances.
- .6 All costs associated with this Agreement must be enumerated in Vendor's proposal. Any costs associated with the Agreement not explicitly enumerated and discussed in the proposal and Agreement will not be honored.
- .7 Vendor is directed not to fill any purchase order at increased prices without authorization from the Director of Procurement and Distribution or designee. In the event that the manufacturer of an item raises the price during the term of this Agreement, Vendor may submit a written request for price increase for Alief ISD's consideration and acceptance or rejection (in Alief ISD's sole discretion), with written proof from the manufacturer. Should Alief ISD determine, in its sole discretion, to accept the price increase, the effective date of the price increase will be thirty (30) calendar days from Alief ISD's acceptance of the Vendor's written request. Under no circumstances shall a price increase be retroactive. Vendors will be informed of Alief ISD's acceptance of any price increase(s) via written approval from the Alief ISD Purchasing Department. Any Vendor invoices reflecting increased prices that did not receive prior written approval from the Alief ISD Purchasing Department will not be honored, and such invoices shall be returned to Vendor for correction and resubmission.
- .8 Vendor shall provide the Alief ISD Purchasing Department with immediate written notice in the event of a price decrease, and such decrease shall be made available to Alief ISD no later than the date that the new price is available on the open market.

### **16. INVOICING AND PAYMENT**

Itemized invoices shall be mailed to the District and directed to Alief ISD's Accounts Payable Department at the following address: P.O. Box 68, Alief, TX 77411. Vendor shall submit invoices within a timely manner during the District's fiscal year in which the good(s) and/or services are purchased. Invoices received more than 60 days after the date the work was performed will not be paid by the District. The following requirements apply to invoices submitted for payment:

- .1 One invoice shall be submitted per Alief ISD Purchase Order.
- .2 Invoice shall bear the following: (a) date of invoice; (b) date(s) of service, if applicable; (c) name of Vendor; (d) brief description of the item(s), quantity, unit price(s), and extended price(s); (e) if applicable, dates of service(s), including list of services provided daily including dates and amount of time spent performing each service and detailed descriptions of the services provided on each of the dates listed including location where services were provided; (f) Vendor's complete mailing address and telephone number.
- .3 Invoice submission shall include any necessary substantiating documentation or information as required by the Agreement; and certification of goods and/or services provided through a signature by a Vendor company representative.
- .4 Invoice shall reference the Alief ISD Purchase Order Number.

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- .5 Invoice shall be in duplicate.
- .6 Invoice shall only be paid for goods/products/equipment/services delivered and accepted by Alief ISD. Advance payment to Vendor is strictly prohibited.
- .7 Vendor is required to submit to the District a completed IRS Form W-9 for the current tax year and all other forms required by the District (e.g., Felony Conviction Notice, Conflict of Interest Questionnaire, etc.) before payment is rendered.
- .8 In accordance with Texas Government Code §2251.021, payments are due to Vendor within forty-five (45) days after the later of the following: (1) the date Alief ISD receives the goods; (2) the date the performance of the service is completed; or (3) the date Alief ISD receives an invoice for the goods and/or services.

In the event Vendor presents the District with invoices, statements, reports, etc. that are incomplete, inaccurate or in need of substantial internal research, such action could result in delay of payment. The District will not be responsible for any interest charges and/or late fees because of delayed payment due to time delays caused by inadequate or incomplete information provided in invoices by Vendor.

Vendor agrees to pay any subcontractors, if any, the appropriate share of the payment received from the District not later than the tenth (10th) day after the date Vendor receives the payment from the District. Vendor shall be responsible for satisfaction of all applicable IRS standards concerning reporting of income and payments to Vendor's subcontractors and/or employees, if any. The exceptions to payments made by the District and/or Vendor listed in Texas Government Code § 2251.002 shall apply to this Agreement. In the event that Vendor's personnel begin work before Vendor receives a valid purchase order and/or the signing of this Agreement, Vendor agrees that the District is not liable for payment of such services rendered.

In addition to all other rights and remedies that the District may have, the District shall have the right to setoff, against any and all amounts due to Vendor by the District, whether due under this Agreement or any other agreement between the District (including any division of the District) and Vendor, any sums to which the District is entitled under this Agreement, as determined by the District in its sole discretion, including, without limitation, sums due by Vendor to the District as a result of indemnification obligations and/or warranty claims.

### **17. TAXES**

The Alief ISD is exempt from and will not be responsible for payment of any taxes, including local, state, and federal Taxes. Vendor shall not include taxes on any invoices submitted to the District. If taxes are imposed on the goods and/or services purchased, the District will not be responsible for payment of the taxes; Vendor shall absorb the taxes entirely. The District will supply tax exemption information upon request.

### **18. INDEMNIFICATION, REMEDIES, AND GOVERNING LAW/VENUE**

- .1 TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE DISTRICT, ITS TRUSTEES, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, DAMAGES, COSTS, FINES, PENALTIES, AND EXPENSES (INCLUDING REASONABLE LITIGATION COSTS AND ATTORNEY'S FEES, INCLUDING APPEALS), FOR WHICH THE DISTRICT, ITS TRUSTEES, OFFICERS, EMPLOYEES, AGENTS, AND/OR REPRESENTATIVES, CAN OR MAY BE HELD LIABLE AS A RESULT OF INJURY (UP TO AND INCLUDING DEATH) TO A PERSON OR PERSONS OR DAMAGE TO PROPERTY, ARISING OUT OF, OCCASIONED BY, OR IN ANY WAY CONNECTED, DIRECTLY OR INDIRECTLY, WITH THE VENDOR'S PERFORMANCE UNDER THIS AGREEMENT (COLLECTIVELY, "CLAIM"), WHETHER OR NOT THE CLAIM ARISES FROM THE NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT, OR VIOLATION OF LAW BY VENDOR, ITS EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS, EXCEPT FOR CLAIMS ARISING ENTIRELY FROM THE WRONGFUL ACTS, OMISSIONS, OR NEGLIGENCE OF THE DISTRICT, OR ITS AGENTS, EMPLOYEES OR REPRESENTATIVES. ALL OBLIGATIONS AS SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION, COMPLETION, OR TERMINATION OF THIS AGREEMENT.**

## **ALIEF INDEPENDENT SCHOOL DISTRICT GENERAL TERMS AND CONDITIONS**

- .2 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the aforementioned indemnification obligation, such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.
- .3 Nothing in this Agreement shall be construed to create a claim or cause of action against the District for which it is not otherwise liable, to waive any immunity or defense to which the District may be entitled, or to create an impermissible deficiency debt of the District.
- .4 Alief ISD and Vendor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Texas, except as otherwise provided in this Agreement or in statutes pertaining specifically to Texas governmental entities.
- .5 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its provisions on conflicts of laws. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of or relating to this Agreement shall be a court of competent jurisdiction in Harris County, Texas.
- .6 Vendor hereby assigns the District any and all claims for overcharges associated with this Agreement under the antitrust laws of the United States, 15 USCA Section 1, *et seq.*, and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, *et seq.*

### **19. QUALITY, WARRANTY, AND SUBSTITUTIONS**

In addition to the guarantees and warranties provided by law, by accepting this Agreement, Vendor hereby expressly guarantees, warrants, and represents that:

- .1 all products/goods and/or services supplied and/or furnished under this Agreement are of high quality, free from all defects in material and workmanship, free from defects in design, meet or exceed and exactly conform in all respects to all terms and requirements of this Agreement (including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the procurement solicitation issued by the District) and all applicable Alief ISD specifications and requirements, and are suitable for and will perform in accordance with the ordinary, intended purpose(s) as well as any special purposes specified by Alief ISD, for a period of one (1) year from the date of the District's acceptance of the goods and/or services or payment of the applicable invoice, whichever is later. All warranties shall survive delivery of the goods and completion of the services; neither the District's acceptance of, nor payment for, said goods and services shall constitute a waiver or modification of any of the warranties of Vendor, or the rights of Alief ISD;
- .2 any goods delivered to the District will be new (*i.e.*, previously unused, non-floor model, in their original packaging, and have not been reconditioned, remanufactured, repackaged, returned, damaged, or refurbished), unless otherwise specified;
- .3 all services performed by Vendor or its subcontractors and all material used on Alief ISD's behalf, will be completely paid for and that there are no materialman's or other liens attached to the goods, products, merchandise, materials, or services which are provided to Alief ISD;
- .4 the goods to be delivered hereunder will not infringe on any valid intellectual property right, including any patent, trademark, trade name, or copyright, and that Vendor will, at Vendor's expense, defend any and all actions or suits charging such infringement and will save Alief ISD, its trustees, agents, and employees, harmless in case of any such action or suit;
- .5 the goods to be delivered hereunder will be manufactured, sold, and/or installed in compliance with the provisions of all applicable federal, state, and local laws and regulations;
- .6 Vendor shall uphold the manufacturer's standard warranty on any products. This warranty shall provide for replacement of defective merchandise, parts and labor, and include pick-up and delivery from the specified District location effective from the date of delivery. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the Vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Agreement or the procurement solicitation, if any;
- .7 Vendor shall obtain prior written approval from the Alief ISD Purchasing Department for any replacement and/or substitution of an item awarded by bid or outlined on a purchase order prior to delivery. Any substitution of materials of any kind or deviation from, change in, alteration to, cancellation of, waiver of,



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or exception to any of the terms or specifications of any purchase order, this Agreement and/or the procurement solicitation (or descriptions or specifications furnished thereunder), or any service agreement must be authorized in writing in advance by the Alief ISD Director of Procurement and Distribution or designee. Replacements and/or substitutions delivered to Alief ISD without prior express written consent by Alief ISD may not be approved for payment, in the sole discretion of Alief ISD; and

- .8 nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of Alief ISD.

### **20. LICENSES AND PERMITS; PERFORMANCE**

For the entire effective period of this Agreement, Vendor represents and warrants that Vendor (and, if approved by the District, any and all subcontractors): (1) has the experience, qualifications, licenses, and certifications required to provide the goods and/or services pursuant to this Agreement; and (2) shall maintain all required licenses, certifications, permits, and any other documentation and/or authorization(s) necessary to perform this Agreement, including, without limitation, authorizations required by any governing entity(ies), including, but not limited to, the City of Houston, Harris County, the State of Texas, and the like. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the Alief ISD's purchase or work order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. When required or requested by Alief ISD, Vendor shall furnish Alief ISD with satisfactory proof of Vendor's compliance with this provision.

Further, Vendor agrees that Vendor's goods will be provided, and/or services will be performed, with reasonable care, skill, judgment, and experience in a professional business-like manner, with no direct supervision from the District. Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Agreement. If Vendor is unable to complete the work in this manner based on the mutually agreed upon timeline, Vendor shall notify the District's Director of Procurement and Distribution in writing.

### **21. SUPPORT**

Vendor shall provide timely and accurate technical advice and sales support to Alief ISD and Alief ISD staff. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. Vendor shall promptly provide training to Alief ISD staff regarding products and/or services supplied by Vendor, at no additional charge, if requested by Alief ISD.

### **22. EVALUATION CRITERIA**

Alief ISD does not purchase on the basis of low prices alone. Alief ISD represents that it has considered each of the criteria in Texas Education Code § 44.031(b), thereby fulfilling Section 44.031(b)'s requirement that it "shall consider" the criteria listed in 44.031(b); in accordance with Module 5 of the TEA FASRG and applicable federal laws,<sup>1</sup> Alief ISD has determined which criteria should be considered most important and has assigned weights/points to each criterion based on its importance as outlined in the procurement solicitation. In considering a contract for award, the District may evaluate aspects of the following, as permitted by applicable law:

- .1 Purchase price;
- .2 the reputation of the Vendor and of the Vendor's goods or services;
- .3 the quality of the Vendor's goods or services;
- .4 the extent to which the goods or services meet the District's needs;
- .5 the Vendor's past relationship with the District;
- .6 the impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses;
- .7 the total long-term cost to the District to acquire the Vendor's goods or services;

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<sup>1</sup> As a general rule, Alief ISD may not apply geographic preferences for procurements involving federal funds. See 2 C.F.R. § 200.319. However, Alief ISD may apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products for use in a Child Nutrition Program. See 7 C.F.R. §§ 210 (National School Lunch Program), 215 (Special Milk Program for Children), 220 (School Breakfast Program), 225 (Summer Food Service Program), 226 (Child and Adult Care Food Program).

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- .8 for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the Vendor or the Vendor's ultimate parent company or majority owner:
  - .1 has its principal place of business in this state; or
  - .2 employs at least 500 persons in this state; and
- .9 any other relevant factor specifically listed in the request for bids or proposals.

The District may choose to contract with a single or multiple Vendors as necessary to obtain the contract mix that is most advantageous. It may be necessary for Alief ISD to establish a competitive range of acceptable responses as part of the evaluation process, or to establish weights for criteria. Such additions, subtractions, or changes to evaluation criteria would be declared elsewhere in the proposal and would supersede this section. If a competitive range is established, responses failing to score in the competitive range may not receive further award consideration.

When Federal funds are anticipated to be utilized for the purchase of goods and/or services provided for in the proposal, the following criteria and weights shall apply:

- .1 Total Cost- 45%
- .2 Extent the Proposal Response, Goods and Services meet any and all applicable requirements and specifications – 40%
- .3 Vendor Effectiveness, Past History and References – 15%

It is the District's perspective that the weighted criteria above represent all required criteria to be considered under applicable law and statute governing this procurement action.

### **23. NO WAIVER OF BREACH**

Failure of Alief ISD to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify successful Vendor in the event of breach, or the acceptance of or payment for any goods hereunder shall not release Vendor from any of the warranties or obligations of this Agreement, and shall not be deemed to waive any right of Alief ISD to insist upon strict performance hereof or any of its rights or remedies as to any such goods, regardless of when shipped, received or accepted, or as to any prior or subsequent default hereunder; nor shall any purported oral modification or rescission of an Agreement, contract or service agreement by Alief ISD operate as a waiver of any of the terms hereof.

### **24. NO WAIVER OF IMMUNITY**

The execution of this Agreement and the performance by the District of any of its obligations hereunder do not, and are not intended to, waive or relinquish, and the District shall not waive or relinquish, any governmental, sovereign immunity or defense from or to liability or prosecution available to the District, its trustees, officers, employees, or agents under federal or Texas laws. Nothing in this Agreement shall be construed as creating any personal liability on the part of any trustee, officer, employee, or representative of Alief ISD.

### **25. PRODUCT RECALLS**

Vendor shall notify the Alief ISD's Director of Procurement and Distribution immediately if a product recall is instituted on any good and/or service Vendor has delivered or if Vendor discovers or becomes aware of any quality or other deficiency in the delivered goods and/or services. This requirement shall survive payment and acceptance of the goods and/or services.

### **26. TEXAS HAZARD COMMUNICATION ACT**

It is the policy of Alief ISD to comply with applicable federal law and the Texas Hazard Communication Act, Texas Health and Safety Code Chapter 502. Therefore, it is necessary to require that all suppliers provide Alief ISD with a current and accurate Safety Data Sheet (SDS), if applicable, for all items sold to Alief ISD, including, but not limited to: products which may contain hazardous substances, create hazardous substances as a by-product, cause harmful physical effects, or otherwise be considered hazardous. Vendor shall be solely responsible to promptly obtain and provide to Alief ISD all necessary SDSs from suppliers of items under this Agreement, as applicable. A separate sheet shall be provided for each individual item (if required) when purchase is made, as

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well as when the proposal is submitted. The SDSs must conform to the most current requirements of the Hazard Communication Standard issued by the Occupational Safety and Health Administration (OSHA) and codified as 29 CFR Section 1910.1200.

### **27. HAZARDOUS MATERIALS**

In the performance of Vendor's services, Vendor shall not cause any release of hazardous substances, including but not limited to asbestos, or contamination of the environment, including the soil, the atmosphere, or any water course or ground water. Vendor shall be liable for any claims or damages resulting from such release of or exposures to any such substances as a result of Vendor's activities.

### **28. NO ASSIGNMENT**

Neither this Agreement nor any right, interest, duty, obligation, or responsibility of Vendor to furnish the goods and/or services specified in this Agreement shall be subcontracted, assigned, transferred, mortgaged, pledged, or otherwise delegated, disposed of, or encumbered in any way by the Vendor without the prior written acknowledgement and approval of Alief ISD. Any attempted assignment of this Agreement by Vendor shall be null and void. In the event Alief ISD approves of any assignment, Vendor shall have full responsibility for the completion and performance of all services and the delivery of all goods awarded to Vendor pursuant to this Agreement.

No purchase or work order made as a result of this Agreement may be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of Alief ISD.

Vendor is required to notify Alief ISD when any material change in operations occurs, including but not limited to, changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

### **29. TEXAS PUBLIC INFORMATION ACT**

- .1 The Parties acknowledge that Alief ISD is obligated to strictly comply with the Texas Public Information Act (TPIA), Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. All Vendor Agreements shall be in compliance with the TPIA.
- .2 All documents exchanged or created in connection with and communications regarding this solicitation or any Agreement with the District are governed by the TPIA.
- .3 Documents submitted and communications regarding a Vendor's proposal response to a solicitation may be deemed confidential during the evaluation process, as provided in Texas Government Code, Subchapter C, Section §552.104, "Exception: Information Related to Competition or Bidding."
- .4 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid and Agreement, and the contractor or Vendor agrees that the Agreement can be terminated if the contractor or Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
- .5 Upon the written request of the District, Vendor will promptly provide specified contracting information exchanged or created under this Agreement. Vendor waives any claim against and releases from liability the District, its trustees, officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement or otherwise created, assembled, maintained, or held by either party and determined by the District, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act, Chapter 552, Texas Government Code.
- .6 Vendors should consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets, or any other proprietary information before responding to this procurement solicitation. Should Vendor's response to this procurement solicitation include trade secrets or proprietary information, or other technical information, documentation and/or expertise that the Vendor considers confidential, Vendor must either (1) conspicuously mark such information as being confidential or, (2) if the information is delivered in oral form, summarize the information in writing within ten (10) Alief ISD business days and identify it as being confidential ("Confidential Information"). Alief ISD shall not be held liable for disclosure of information that is not conspicuously marked or identified as Confidential Information in accordance with the aforementioned process. All requests to secure trade secrets must be accompanied by factual evidence of potential loss of competitive or economic harm.
- .7 Vendor shall immediately notify the District if Vendor receives from any third-party a request for information (including, but not limited to, a subpoena), which pertains to the documentation and records maintained by Vendor on behalf of the District pursuant to this Agreement. Vendor shall provide a copy of such request to the District, unless otherwise prohibited by law.



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### **30. SEVERABILITY**

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

### **31. NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement shall be deemed or construed to create any third-party beneficiaries or otherwise give any third party any claim or right of action against any party to this Agreement.

### **32. CHANGES AND AMENDMENTS**

This Agreement may be changed or amended only by the mutual agreement of the parties, in writing to be attached to and incorporated in this Agreement. No such changes or amendments shall have any effect unless and until a written amendment to this Agreement is executed by Alief ISD's Director of Procurement and Distribution (or designee) after any necessary approvals have been obtained from the Alief Board of Trustees.

### **33. NOTICE**

Any notice provided under the terms of this Agreement by either party to the other shall be in writing and may be effected by certified mail, return receipt requested. Notice to either party shall be sufficient if made or addressed to the address listed in the signature line of this Agreement. Each party may change the address to which notice is to be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.

### **34. ATTORNEYS' FEES**

The prevailing party in any adjudication relating to or arising out of this Agreement shall be awarded all reasonable and necessary attorneys' fees and costs.

### **35. NON-EXCLUSIVITY**

Nothing in this Agreement may be construed to imply that Vendor has the exclusive right to provide the District with goods and/or services. During the effective period of this Agreement, the District reserves the right to use all available resources to procure other goods and/or services as needed, and doing so will not violate any rights of Vendor. In addition, nothing in this Agreement may be construed to require that the District purchase any specific amount, quantity, or quota of goods and/or services from Vendor.

### **36. INTELLECTUAL PROPERTY**

Vendor represents and warrants that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement.

### **37. FORCE MAJEURE**

The parties to this Agreement may be excused from performance hereunder during the time and to the extent that they are prevented from performance due to an act of God, fire, strike or lockout, or other occurrences which are reasonably beyond such party's control, when satisfactory evidence thereof is presented to the other party and provided that such non-performance is not due to the fault of the non-performing party. The parties to this Agreement are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. Neither party shall have any claim for damages against the other resulting from delays caused solely by force majeure. Notwithstanding any other provision of this Agreement, in the event the Vendor's performance of its obligations under this Agreement is delayed or stopped by a force majeure event, Alief ISD shall have the option to terminate this Agreement. This section shall not be interpreted as to limit or otherwise modify any of Alief ISD's contractual, legal, or equitable rights.

### **38. INDEBTEDNESS**

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Vendor represents that to the best of its knowledge it is not indebted to the District. Indebtedness to the District may be grounds for termination of this Agreement.

### **39. VENDOR SOLICITATION AND MARKETING**

No Vendor may personally solicit on Alief ISD premises or property. At no time shall the Vendor make "cold-call" solicitations within the District by means of telephone, email, or personal visits. Vendors may contact campus District personnel ONLY by means of written correspondence through traditional delivery service companies such as the U.S. Postal Service, UPS, or FedEx. In the event District personnel identify a need for certain products and/or services, the District will make a request to the Vendor for information/assistance at that time.

### **40. INSURANCE REQUIREMENTS**

Vendor shall comply with all of the District's insurance requirements. Vendor shall carry and maintain in full force and effect, for the duration of this Agreement, the following insurance coverages, in the amount(s) set out in the sub-sections that follow and with responsible insurer(s) (rated A or better by A.M. Best) acceptable to the District: Workers' Compensation; Employers' Liability; Commercial General Liability; Automobile Liability; and Umbrella Liability. Vendor's insurance coverage shall be in accordance with the following requirements:

- .1 Alief ISD shall be designated as an Additional Insured on the Commercial General Liability, Automobile Liability, and Umbrella Liability policies. In addition, Alief ISD shall be named as an alternate employer on the workers' compensation policy.
- .2 Vendor shall cause the insurance policies to: provide that any losses will be payable notwithstanding any act or negligence of the District or any other person; provide that the insurer will have no right of subrogation against Alief ISD; and be reasonably satisfactory to the District in all other respects.
- .3 All of Vendor's insurance coverage shall be primary and non-contributory.
- .4 All insurance policies required under this Agreement shall contain a provision that at least thirty (30) days' prior written notice shall be given to Alief ISD in advance of the effective dates of any cancellation, reduction, modification, termination, material change, or non-renewal of such insurance policies.
- .5 Vendor shall maintain insurance coverage in the amounts specified by the District. The Vendor shall not commence any portion of the work under this Agreement until all the insurance required herein and certificates of such insurance have been filed with and approved in writing by Alief ISD.
- .6 There shall be a hold harmless agreement in which the Vendor assumes liability on the Agreement and holds Alief ISD harmless.
- .7 The Vendor shall purchase and maintain in force the following types and amounts of insurance for the performance of all of its obligations under this Agreement and provide Alief ISD with a certificate(s) of insurance as evidence. Certificates of Insurance on the current ACORD form shall be issued to the District prior to the start of work showing all required insurance coverage. Copies of such insurance documents shall be part of the Agreement documents, and the Vendor shall maintain such in force throughout the term of its Agreement with the District.
- .8 Casualty Insurance and Securities-Minimum Requirements:
  - .1 Successful Vendor must maintain workers' compensation coverage for employees as required by all applicable Federal, State, Maritime, and local laws, as well as Employer's Liability with a limit of at least \$100,000 per accident.
  - .2 Comprehensive-General Liability Insurance (Occurrence basis only - Bodily Injury and Property Damage):  
Each Occurrence - \$1,000,000  
Aggregate - \$2,000,000
  - .3 Comprehensive Automobile Liability Insurance- Business (Commercial) Automobile Liability Insurance\*: Bodily Injury and Property Damage covering all owned, non-owned and hired vehicles:  
Bodily Injury and Property Damage Combined Single Limit: \$1,000,000
  - .4 Umbrella Liability Insurance (Excess): \$1,000,000

No deletions/exclusions from standard coverage form shall be allowed without the prior written consent of Alief ISD's Director of Procurement and Distribution. The Vendor shall have ten (10) Alief ISD business days from the date of the award of the Agreement to furnish the Alief ISD Purchasing Department the required insurance

# **ALIEF INDEPENDENT SCHOOL DISTRICT**

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certificates. No work shall commence until a copy of Vendor's current insurance certificate(s) is/are received at and approved in writing by the Alief ISD Purchasing Department, 12102 High Star Drive, Houston, Texas 77072.

When insurance is required, the above limits are the minimum required by Alief ISD. Alief ISD reserves the right to require additional coverages and/or higher limits to be carried by Vendor as specified in the procurement solicitation documentation, as deemed desirable by Alief ISD, depending on the type of project.

### **41. FEDERAL GRANT REQUIREMENTS**

#### **.1 Federal Award Contracts**

- .1 All contracts under federal awards must meet federal, state and local requirements.
- .2 The Agreement shall only be effective upon receipt by the District of the Notice of Grant Award (NOGA) from the federal/state awarding agency.
- .3 The Agreement term/period shall be aligned to the grant period of availability, as stated on the NOGA from the federal/state awarding agency (period of availability).
- .4 All services shall be completed during the effective dates of the Agreement.
- .5 All services shall be invoiced monthly after services are received (rather than paid lump sum at the beginning of the period of availability before services are rendered) and shall only be paid upon verification of receipt of services.
- .6 The regulations for procurement in 2 CFR § 200.317-327 shall be followed by Alief ISD in issuing the Agreement.
- .7 All professional services provided under the Agreement will follow the provisions of 2 CFR § 200.459 Professional service costs.
- .8 The Agreement shall identify the funding sources that will be used for the goods and/or services to be provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
- .9 The Agreement shall identify and lists only reasonable, necessary, and allocable services to be provided during the period of availability of the funding sources listed in the Agreement.
- .10 The administrative costs charged to the grant in the Agreement must comply with any limitations for administrative costs for funding sources (if applicable).
- .11 The Agreement shall specify that the invoice provided by the Vendor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.
- .12 If the source of funds for this purchase is federal funds, the following federal provisions apply, as applicable: the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 / 29 CFR Part 5), the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60), the McNamara-O'Hara Service Contract Act (41 U.S.C. 351), Section 306 of the Clean Air Act (42 U.S.C. § 1857h), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5), Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), Debarment and Suspension (Executive Orders 12549 and 12689), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), the Education Department General Administrative Regulations, 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77, 79, 81-82, 84, 86, and 97-99 ("EDGAR"), mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), and all federal certifications and other requirements of federal law, including but not limited to those included within Alief ISD's Bid Attributes and those mandated by federal agencies making award(s) of federal funds to Alief ISD.