

Contractor to provide the YMCA with written progress reports on at least a monthly basis.

- D. Request and work to ensure completion of the Work, including all punch list items, no later than June 1, 2023.
- E. Timely pay the Contractor, and cause the Contractor to timely pay all subcontractors and suppliers. Upon completion of the Work, the District will cause the Contractor to provide a bills paid affidavit certifying that all subcontractors and suppliers have been paid in full.
- F. Direct the Contractor and its subcontractors and suppliers to utilize only the Site for the Work, including staging of materials and parking.
- G. CAUSE THE CONTRACTOR TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS THE YMCA (INCLUDING ITS OFFICERS, DIRECTORS, AGENTS, SUBSIDIARIES, AFFILIATES AND EMPLOYEES), FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, CAUSES OF ACTION, SUITS, JUDGMENTS OR DEFENSE EXPENSES (INCLUDING ATTORNEY'S FEES AND COSTS) FOR (i) THE DEATH OR PERSONAL INJURY OF ANY PERSONS (INCLUDING, BUT NOT LIMITED TO, SUBCONTRACTORS, AGENTS, EMPLOYEES, INVITEES, SUB-SUBCONTRACTORS AND THEIR AGENTS, EMPLOYEES OR INVITEES) OR FOR (ii) DAMAGE TO THE SITE OR THE CENTER (INCLUDING THE LOSS OR LOSS OF USE THEREOF), DIRECTLY OR INDIRECTLY CONNECTED WITH, ATTRIBUTABLE TO, OR ARISING FROM THE WORK TO BE PERFORMED UNDER THE CONSTRUCTION CONTRACT, THIS INDEMNITY IS INTENDED TO INDEMNIFY THE YMCA AGAINST THE CONSEQUENCES OF ITS PARTIAL, JOINT, OR CONCURRENT NEGLIGENCE, ACTIVE OR PASSIVE, OR FAULT.

II. RELATION OF THE PARTIES. The nature of the relationship between YMCA FW and CISD is not that of partners in a partnership or joint venture.

III. REPRESENTATIONS AND WARRANTIES. Each party to this Agreement represents and warrants that it:

- A. has full power, authority and legal right to execute and perform this Agreement;
- B. has taken all necessary legal and corporate action to authorize the execution and performance of this Agreement;
- C. intends this Agreement to constitute the final legal, valid and binding obligations of such party;
and
- D. shall act in good faith to give effect to the intent of this Agreement and to take such other action as may be necessary or convenient to consummate the purpose and subject matter of this Agreement.

- IV. DEFAULT AND REMEDIES.** In addition to all other rights a party may have available according to law, if a party hereto defaults by failing to substantially perform any provision, term, or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may, after providing written notice to the defaulting party, (i) cure the default, in which case the defaulting party shall reimburse immediately the non-defaulting party's direct costs to cure the default, or (ii) terminate this Agreement. Any notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have thirty (30) days from the effective date of such notice to cure the default(s). Where the cure cannot be reasonably achieved within the 30-day grace period, good-faith measures to resolve the breach during that grace period shall toll the non-breaching party's ability to exercise its remedies hereunder, not to exceed ninety (90) days. Unless waived by a party providing notice, the failure to cure the default(s) within such time period, as may be extended under this Agreement, shall result in the automatic termination of this Agreement.
- V. FORCE MAJEURE.** If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, and the unavailability or exponential increase in the expense of construction materials. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to performing with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.
- VI. DISPUTE RESOLUTION.** Any controversies or disputes arising out of or relating to this Agreement shall first be subject to negotiation between the parties. If negotiation does not produce an agreement, the parties shall submit to mandatory mediation, and be responsible for acting in good faith to resolve the dispute. If mediation fails, the parties may submit the matter to the state district courts of the State of Texas, in Tarrant County
- VII. CONFIDENTIALITY.** Both parties acknowledge that during this Agreement, each may obtain confidential information regarding the other party's business. Both parties agree to treat all such information and the terms of this Agreement as confidential and to take all reasonable precautions against disclosure of such information to unauthorized third parties during and after the term of this Agreement. Upon request by an owner, all documents relating to the confidential information will be returned to such owner.
- VIII. NOTICE.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses listed above or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the third day after mailing if not signed for.

- IX. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement, and it is intended to restate and supersede the prior Memorandum of Agreement executed on or about October 28, 2021. There are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
- X. AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and signed by both parties.
- XI. SEVERABILITY.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- XII. WAIVER OF CONTRACTUAL RIGHTS.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- XIII. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of Texas.
- XIV. OWNERSHIP OF NATATORIUM.** Upon completion of the Natatorium, this Agreement will terminate, and the YMCA will retain ownership of the Natatorium subject to the rights of the CISD under the Facilities Use Agreement.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have signed their names below on the above-mentioned date.

Mike Brown, President & CEO

YMCA of Metropolitan Fort Worth

Dr. Mia Hall, Board President

Crowley Independent School District

