

STATE OF TEXAS                   §  
   §  
COUNTY OF FORT BEND       §

**AGREEMENT FOR CONSTRUCTION – PINNACLE AQUATIC FITNESS CENTER  
RFP 17-025**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Frost Construction Company, Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

**WITNESSETH**

WHEREAS, County desires that Contractor complete construction of a new 6,400 square foot, pre-engineered steel structure facility containing a lap/aerobic fitness pool, lockers and restrooms, (hereinafter "Services") pursuant to RFP 17-025; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

**Section 1. Scope of Services**

1.1 Contractor shall render Services to County as defined in the Construction Proposal dated January 17, 2017 (attached hereto as Exhibit A).

1.2 In accordance with Chapter 2258 of the Texas Government Code, all persons employed by Contractor shall be compensated at not less than the rates shown in the attached Exhibit B. Contractor shall keep detailed records of each of its workers and said records shall be made available to County for inspection at all reasonable times.

**Section 2. Personnel**

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the

opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

### **Section 3. Compensation and Payment**

3.1 Contractor's fees shall be calculated at the rates set forth in the attached exhibits. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is one million five hundred ninety-nine thousand one hundred ten dollars and no/100 (\$1,599,110.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 Contractor shall submit all "Applications for Payment" (as herein defined) for installments of the Maximum Compensation for approval and processing to County staff designated by the Facilities Management & Planning Director, one (1) electronic (pdf) or one (1) original on a monthly basis showing the amounts due for services performed on or before the tenth (10<sup>th</sup>) day of each calendar month during the progress of the Services. Each Application for Payment shall be in a form acceptable to the County and shall reflect any amount representing the proportionate part of the Services performed during the previous month. As support of each Application for Payment, Contractor shall submit the following in a form acceptable to the County Auditor:

3.3.1 A statement in the form of the current Application and Certificate for Payment, as published by the American Institute of Architects ("Application for Payment") executed by Contractor certifying that:

3.3.1.1 The proportionate part of the Services described in such Application for Payment has been performed;

3.3.1.2 Contractor's amount included in the Application for Payment attributable to the Services provided is due and owing;

3.3.1.3 There are no known mechanics' or materialmen's liens outstanding as of the date of the Application for Payment or if such liens are known, such have been adequately bonded;

3.3.1.4 All due and payable bills with respect to the Services have been paid to date or are included in the amount requested in the current Application for Payment, and

3.3.1.5 Except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Services.

3.3.2 A partial lien waiver and release in a form acceptable to the County Auditor effective through the date of Contractor's preceding Application for Payment, executed by Contractor with a statement certifying those matters set forth in clauses 3.3.1.1 through



3.3.1.5 of subparagraph 3.3.1 above, certifying that waivers from all subcontractors and materialmen have been obtained in such form so as to constitute an effective waiver of liens under the laws of the State of Texas.

3.3.3 An affidavit executed by Contractor that payrolls, bills for materials and equipment, and other indebtedness connected with the Services for which County or Contractor might be responsible or encumbered (less amounts withheld by Contractor) have been paid or otherwise satisfied, including unconditional waivers and releases upon final payment from all trade contractors, suppliers, material men, or other third parties that provided labor, services, equipment or material to the Project, satisfying the requirements for such releases set forth in the Texas Property Code Section 53.085.

3.4 Within thirty (30) days after receipt of each uncontested Application for Payment together with the supporting materials required under this Agreement, County shall advance to Contractor the uncontested amount requested in such uncontested Application for Payment, except five percent (5%) of the amount requested (hereinafter "Retainage") in each Application for Payment by County. The Retainage withheld shall be released upon final completion of the entire Project and verification of satisfactory work performed, unless grounds exist for withholding payment on account of other defaults by Contractor, including Services provided by its sub-contractors.

3.5 Payment, constituting the entire unpaid balance of the Maximum Compensation, less fifty percent (50%) of the Retainage then held by County and such amount as the Facilities Management & Planning Director determines is reasonably necessary for all incomplete Services (including, without limitation, punchlist items) and for all unsettled claims, as provided in this Agreement, shall be advanced by County to Contractor upon the date determined substantially completed. County shall pay all outstanding and withheld portions of the Maximum Compensation to Contractor upon the later to occur of (i) thirty (30) days after the Project is accepted by the County or, (ii) the date the Contractor causes all mechanics' and materialmen's liens filed against the Project to be removed. County shall have received from Contractor a lien waiver or an affidavit to the effect that it and all its subcontractors and suppliers of labor and materials have been paid in full (which lien waiver or affidavit must be in form and substance sufficient as a matter of law to dissolve all liens or claims of liens for labor or service performed or rendered and material supplied or furnished, in connection with the construction and installation of the Project), and with respect to this Agreement, Contractor shall have provided County the Final Certificate of Occupancy for the building.

3.6 Upon payment of the entire balance of the Maximum Compensation and all other amounts withheld by County pursuant to Section 3.5, Contractor shall execute and deliver to County a release discharging County from all liabilities, obligations and claims to pay the Maximum Compensation to this Agreement.

#### **Section 4. Limit of Appropriation**

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total

maximum sum of one million five hundred ninety-nine thousand one hundred ten dollars and no/100 (\$1,599,110.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed one million five hundred ninety-nine thousand one hundred ten dollars and no/100 (\$1,599,110.00).

#### **Section 5. Time of Performance**

5.1 The time for performance of the Scope of Services by Contractor shall begin with receipt of the Notice to Proceed from County and end no later than two hundred forty (240) calendar days thereafter. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

5.2 If the Services are not substantially completed within the time for performance or within such additional time as may be extended by County, County will deduct from the final payment as liquidated damages and not as a penalty the sum of two hundred and fifty (\$250.00) per calendar day that the Services are not substantially complete. Such sum is agreed upon as a reasonable and proper measure of the damages County will sustain.

#### **Section 6. Modifications and Waivers**

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

#### **Section 7. Termination**

7.1 Termination for Convenience – County may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;



7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously presented for payment by Contractor to County. Contractor's final Pay Application for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

#### **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

#### **Section 9. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

#### **Section 10. Insurance**

10.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional

Liability Insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies including Workers' Compensation written on behalf of Contractor, excluding Professional Liability, shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

10.4 Builders Risk Insurance: Contractor shall obtain and keep in full force and effect until the Transfer Date, Builders Risk Insurance, subject to policy terms and conditions, of direct physical loss or damage to property, materials, equipment and supplies which are to become an integral part of the Project, whether owned by Contractor, or subcontractors of every tier, and in which one or more of same has an insurable interest, while in transit, while at the Construction Site awaiting construction, during construction, and until the Transfer Date. Such insurance shall be maintained to cover, as nearly as practicable, the insurable value of such property, materials, equipment and supplies at risk, and shall contain a waiver of subrogation in favor of Contractor, Architect, subcontractors of any tier and County for loss or damage occurring during the Work and shall name Contractor as the named insured and County as additional insureds. All Builder's Risk Insurance proceeds shall be paid directly to the Contractor.

#### **Section 11. Performance and Payment Bond**

Contractor shall post with County, not later than ten (10) days of the execution of this Agreement, a performance and payment bond in the amount of one hundred percent (100%) of



the total lump sum price in such form as is satisfactory to County. The bond shall be executed by a corporate surety company duly authorized and admitted to do business in the State of Texas and licensed to issue such a bond in the State of Texas.

## **Section 12. Indemnity**

**12.1 CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

12.2 Contractor shall timely report all such matters to County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month; provide County with a written report on each such matter, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of County required by Contractor in the defense of each matter.

12.3 Contractor's duty to defend indemnify and hold County harmless shall be absolute. It shall not abate or end by reason of the expiration or termination of the Agreement unless otherwise agreed by County in writing. The provisions of this section shall survive the termination of the Agreement and shall remain in full force and effect with respect to all such matters no matter when they arise.

12.4 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Contractor, Contractor shall nevertheless fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Contractor are not at issue in the matter.

12.5 Contractor's indemnification shall cover, and Contractor agrees to indemnify County, in the event County is found to have been negligent for having selected Contractor to perform the work described in this request.

12.6 The provision by Contractor of insurance shall not limit the liability of Contractor under this Agreement.

12.7 Contractor shall cause all trade contractors and any other contractor who may have a contract to perform construction or installation work in the area where work will be performed under this request, to agree to indemnify County and to hold it harmless from all claims for bodily injury and property damage that arise may from said Contractor's operations. Such provisions shall be in form satisfactory to County.

12.8 Loss Deduction Clause - County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of

deductibles shall be the sole responsibility of Contractor and/or trade contractor providing such insurance.

**Section 13. Confidential and Proprietary Information**

13.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

13.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

13.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.



13.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

13.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

#### **Section 14. Independent Contractor**

14.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

14.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

#### **Section 15. Notices**

15.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

15.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Facilities Management and Planning Attn: Director 301 Jackson Street, Suite 301 Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street Richmond, Texas 77469

Contractor: Frost Construction Company, Inc.  
Attn: Scott Frost  
19506 Highway 59 North, Suite 220  
Humble, Texas 77338

15.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 15.1 and 15.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

15.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

15.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

#### **Section 16. Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

#### **Section 17. Performance Warranty**

17.1 Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

17.2 Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

#### **Section 18. Assignment and Delegation**

18.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

18.2 Neither party may delegate any performance under this Agreement.



18.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 19. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

**Section 20. Successors and Assigns**

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section 21. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 22. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 23. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

**Section 24. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 25. Conflict**

In the event there is a conflict between this Agreement and the attached exhibits this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the day signed by the last party.

FORT BEND COUNTY

FROST CONSTRUCTION COMPANY, INC

\_\_\_\_\_  
Robert E. Hebert, County Judge

\_\_\_\_\_  
Authorized Agent – Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Agent – Printed Name

ATTEST:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
James Knight, Facilities Management/Planning Director

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Marcus D. Spencer, First Assistant County Attorney

#### AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$\_\_\_\_\_ to accomplish and pay the obligation of Fort Bend County under this contract.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

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# EXHIBIT A



19506 Highway 59 North, Ste: 220  
Humble, Texas 77338

January 17, 2017

via Email: [james.knight@fortbendcountytexas.gov](mailto:james.knight@fortbendcountytexas.gov)

Mr. James Knight  
Director of Facilities Management & Planning  
Fort Bend County  
301 Jackson Street, Suite 301  
Richmond, Texas 77469

Re: Fort Bend County RFP 17-025 Construction of Pinnacle Aquatic Fitness Center

Dear Mr. Knight:

Pursuant to the County's December 13, 2016 order to enter into negotiations for the above captioned project, we are pleased to present this construction proposal for review and approval. As stated in our November 29, 2016 statement of qualifications, this project provides us with the opportunity to demonstrate our experience as a General Contractor and understanding of the project accordingly.

After careful review with the County staff, Frost Construction solicited and received competitive subcontractors and material supplier proposals for the requested work indicated in the construction documents. Frost Construction has reviewed and approved proposal for the sum of \$1,599,110.00, One-Million Five-Hundred Ninety-Nine Thousand One Hundred and Ten Dollars. Our Proposal includes project general conditions, insurance, performance and payment bonds and all labor and materials to complete the work.

Our Proposal fully corresponds with the project requirements and construction documents. This proposal considers a 240 calendar day construction schedule, starting from the "Notice to Proceed".

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Frost", is written over a faint, larger blue outline of the same signature.

Scott Frost  
President

Telephone: 281-446-6522

Fax: 281-446-0552



From: Frost Construction Company, Inc.  
 Jobid: F546 Pinnacle Aquatics-Ft Bend Cty

Page no: 2  
 Application no: 1  
 Application date: 1/31/17  
 Period to: 1/31/17  
 Architect's Project No:

A	B	C	D	E	F	G		H	I
Item No.	Description of Work	Scheduled Value	----- Work Completed ----- Previous Application	This Period	Materials Stored (not in D or E)	Total Completed and Stored to Date (D+E+F)	% (G/C)	Balance to Finish (C-G)	Retainage
1	Mobilization	6,700.00	0.00	0.00	0.00	0.00	0	6,700.00	0.00
2	Concrete	99,000.00	0.00	0.00	0.00	0.00	0	99,000.00	0.00
3	Earthwork	66,000.00	0.00	0.00	0.00	0.00	0	66,000.00	0.00
4	Termite	400.00	0.00	0.00	0.00	0.00	0	400.00	0.00
5	Rough Carpentry	1,400.00	0.00	0.00	0.00	0.00	0	1,400.00	0.00
6	PEMB	85,700.00	0.00	0.00	0.00	0.00	0	85,700.00	0.00
7	PEMB Erection	38,500.00	0.00	0.00	0.00	0.00	0	38,500.00	0.00
8	Doors and Hardware	9,500.00	0.00	0.00	0.00	0.00	0	9,500.00	0.00
9	Glass and Glazing	35,800.00	0.00	0.00	0.00	0.00	0	35,800.00	0.00
10	Plumbing	49,100.00	0.00	0.00	0.00	0.00	0	49,100.00	0.00
11	Swimming Pool	245,600.00	0.00	0.00	0.00	0.00	0	245,600.00	0.00
12	Swimming Pool Grates	7,500.00	0.00	0.00	0.00	0.00	0	7,500.00	0.00
13	Hardi Board	105,500.00	0.00	0.00	0.00	0.00	0	105,500.00	0.00
14	Overhead Doors	37,800.00	0.00	0.00	0.00	0.00	0	37,800.00	0.00
15	Sealant	1,600.00	0.00	0.00	0.00	0.00	0	1,600.00	0.00
16	Insulation Building	10,500.00	0.00	0.00	0.00	0.00	0	10,500.00	0.00
17	Flooring - Ceramic	49,000.00	0.00	0.00	0.00	0.00	0	49,000.00	0.00
18	Paint	14,000.00	0.00	0.00	0.00	0.00	0	14,000.00	0.00
19	Toilet Accs	13,200.00	0.00	0.00	0.00	0.00	0	13,200.00	0.00
20	Electrical	150,400.00	0.00	0.00	0.00	0.00	0	150,400.00	0.00
21	Exercise Floor	10,500.00	0.00	0.00	0.00	0.00	0	10,500.00	0.00
22	Signs/Plaques	700.00	0.00	0.00	0.00	0.00	0	700.00	0.00
23	Louver Blinds	1,800.00	0.00	0.00	0.00	0.00	0	1,800.00	0.00
24	Misc Steel	23,100.00	0.00	0.00	0.00	0.00	0	23,100.00	0.00
25	Alum Canopies	5,400.00	0.00	0.00	0.00	0.00	0	5,400.00	0.00
26	Masonry-Stone Veneer	18,400.00	0.00	0.00	0.00	0.00	0	18,400.00	0.00
27	Fire Stopping	1,600.00	0.00	0.00	0.00	0.00	0	1,600.00	0.00
28	Fire Alarm	10,800.00	0.00	0.00	0.00	0.00	0	10,800.00	0.00
29	SWPPP	1,800.00	0.00	0.00	0.00	0.00	0	1,800.00	0.00
30	Site Water-Domestic	7,600.00	0.00	0.00	0.00	0.00	0	7,600.00	0.00
31	Site Sanitary	8,600.00	0.00	0.00	0.00	0.00	0	8,600.00	0.00
32	Storm Sewer	23,200.00	0.00	0.00	0.00	0.00	0	23,200.00	0.00
33	Gypsum Board	82,500.00	0.00	0.00	0.00	0.00	0	82,500.00	0.00
34	Acoustical Ceiling	6,500.00	0.00	0.00	0.00	0.00	0	6,500.00	0.00
35	Anchor Bolts	3,200.00	0.00	0.00	0.00	0.00	0	3,200.00	0.00
36	HVAC	130,700.00	0.00	0.00	0.00	0.00	0	130,700.00	0.00
37	Metal Lockers	4,000.00	0.00	0.00	0.00	0.00	0	4,000.00	0.00

From: Frost Construction Company, Inc.  
 JobId: F546 Pinnacle Aquatics-Ft Bend Cty

Page no: 3  
 Application no: 1

A	B	C	D	E	F	G		H	I
Item No.	Description of Work	Scheduled Value	----- Work Completed ----- Previous Application	This Period	Materials Stored (not in D or E)	Total Completed and Stored to Date (D+E+F)	% (G/C)	Balance to Finish (C-G)	Retainage
38	Swim Pool Chair Lift	4,500.00	0.00	0.00	0.00	0.00	0	4,500.00	0.00
39	Louvers 4 PC	2,100.00	0.00	0.00	0.00	0.00	0	2,100.00	0.00
40	Membrane	18,200.00	0.00	0.00	0.00	0.00	0	18,200.00	0.00
41	Fence	3,100.00	0.00	0.00	0.00	0.00	0	3,100.00	0.00
42	Signage	2,000.00	0.00	0.00	0.00	0.00	0	2,000.00	0.00
43	MEP Allowance	16,200.00	0.00	0.00	0.00	0.00	0	16,200.00	0.00
44	Owners Contingency	10,000.00	0.00	0.00	0.00	0.00	0	10,000.00	0.00
45	Test & Balance Allow	20,000.00	0.00	0.00	0.00	0.00	0	20,000.00	0.00
46	Insurance	11,400.00	0.00	0.00	0.00	0.00	0	11,400.00	0.00
47	Bonds	23,100.00	0.00	0.00	0.00	0.00	0	23,100.00	0.00
48	General Conditions	120,910.00	0.00	0.00	0.00	0.00	0	120,910.00	0.00
	Totals	1,599,110.00	0.00	0.00	0.00	0.00	0	1,599,110.00	0.00



# Fort Bend County RFP 17-025

## SUMMARY OF UNDERSTANDING PROJECT

As team players, everything we do is “open book” for your input, review and approval.

Through the use of subcontractors, suppliers, and our own professional forces, we provide the necessary labor, materials, tools, equipment, temporary utilities, and facilities necessary to complete all construction. The following represents the services we will provide to Fort Bend County. All activities are specifically tailored to meet the specific needs and objectives of Fort Bend County.

- Coordinate project mobilization
- Supervise all field subcontractors and trades
- Conduct jobsite coordination meetings
- Participate in client progress review meetings
- Monitor and update the project schedule throughout the construction phase
- Coordinate activities with equipment suppliers and vendors
- Provide testing and inspection services
- Enforce site-specific safety program
- Provide on-site project administration services including cost accounting and document control
- Prepare and issue monthly project status reports
- Implement quality control program
- Review and approve all progress payments including:
  - Verification that equipment/systems have been approved
  - Verification that materials/equipment have been delivered and/or installed in accordance with the contract documents
  - Verification that the percentage of work complete is accurate and reflects the appropriate balance of work to be completed
- Prepare final punch list and conduct inspections
- Assemble equipment operations and maintenance manuals and assist in client training
- Secure and transmit record documentation including equipment warranties and guarantees to the client
- Expedite project closeout and participate in commissioning activities
- Coordinate client move-in and building occupancy

We look forward to working with Fort Bend County should we be awarded this project.

Frost Construction Company, Inc.  
19506 Highway 59 North, Ste: 220  
Humble, Texas 77338  
Telephone: 281-446-6522  
Fort Bend County RFP 17-025  
Pinnacle Aquatic Fitness Center

ID	Task Name	Duration	Start	Finish	M 1/9	M 1/16	M 1/23	M 1/30	M 2/6	M 2/13	M 2/20	M 2/27	M 3	
					S	S	F	T	W	T	M	S	S	F
6	SLAB ON GRADE	30 days	Tue 1/31/17	Tue 3/14/17										
1	PINNACLE AQUATICS	205 days	Wed 1/18/17	Wed 11/1/17										
5	SITE UTILITIES	10 days	Wed 1/18/17	Wed 2/1/17										
2	PEMB APPROVAL DRAWING	63 days	Thu 1/19/17	Tue 4/18/17										
4	EARTHWORK	21 days	Fri 1/27/17	Sat 2/25/17										
3	PEMB FABRICATION	10 days	Tue 4/25/17	Tue 5/9/17										
7	POOL CONCRETE	30 days	Wed 2/8/17	Wed 3/22/17										
8	MEP ROUGH IN	14 days	Wed 5/3/17	Tue 5/23/17										
9	OPENINGS	21 days	Mon 4/24/17	Tue 5/23/17										
10	FINISHES	75 days	Mon 4/24/17	Sat 8/5/17										
11	SPECIALTIES	11 days	Fri 7/28/17	Sat 8/12/17										
12	MEP TRIM OUT	14 days	Wed 8/2/17	Tue 8/22/17										
13	CLEAN AND PUNCH	14 days	Wed 8/2/17	Tue 8/22/17										

Task

Progress

Milestone

Summary

Rolled Up Task

Rolled Up Milestone

Rolled Up Progress

Split

External Tasks

Project Summary

Group By Summary

Project: PINNACLE AQUATICS  
Date: Mon 11/28/16



6	M 3/13	M 3/20	M 3/27	M 4/3	M 4/10	M 4/17	M 4/24	M 5/1	M 5/8	M 5/15	M 5/22	M 5/29	M 6/5	M 6/12	M 6/19	M 6/26	M 7/3	M 7/10		
T	W	T	M	S	S	F	T	W	T	M	S	S	F	T	W	T	M	S	S	F

Project: PINNACLE AQUATICS  
Date: Mon 11/28/16

Task

Progress

Milestone

Summary

Rolled Up Task

Rolled Up Milestone

Rolled Up Progress

Split

External Tasks

Project Summary

Group By Summary

Working days - excludes weekends





# EXHIBIT B

## PREVAILING WAGES:

This project is subject to the prevailing wage rate requirements of Chapter 2258 of the Government Code. The Contractor shall pay Fort Bend County sixty dollars (\$60.00) for each worker employed by the Contractor for the provision of services described herein for each calendar day or part of the day that the worker is paid less than the below stated rates. Contractors may also visit [www.wdol.gov/dba.aspx](http://www.wdol.gov/dba.aspx).

General Decision Number: TX160297 09/16/2016 TX297  
Superseded General Decision Number: TX20150297

State: Texas  
Construction Type: Building  
County: Fort Bend County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/08/2016
1	01/15/2016
2	03/18/2016
3	04/01/2016
4	07/01/2016
5	07/29/2016
6	09/16/2016

\* ASBE0022-009 06/01/2016

Rates      Fringes

ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct,

Pipe and Mechanical System Insulation)	\$ 22.92	12.26
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BOIL0074-003 01/01/2014

BOILERMAKER	\$ 23.14	21.55
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CARP0551-008 04/01/2016

CARPENTER (Excludes Acoustical Ceiling Installation, Drywall Hanging, Form Work and Metal Stud Installation)	\$ 23.05	8.78
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ELEC0716-005 08/31/2015

ELECTRICIAN (Excludes Low Voltage Wiring and Installation of Alarms)	\$ 30.25	9.08
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ELEV0031-003 01/01/2016

ELEVATOR MECHANIC	\$ 39.24	29.985+a
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FOOTNOTES: A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.

ENGI0450-002 04/01/2014

POWER EQUIPMENT OPERATOR: Cranes	\$ 34.85	9.85
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IRON0084-002 06/01/2015

IRONWORKER (ORNAMENTAL AND STRUCTURAL)	\$ 23.02	6.35
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PLAS0079-004 01/01/2015

PLASTERER	\$ 19.92	1.00
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PLUM0068-012 10/01/2015

PLUMBER (Excludes HVAC Pipe Installation)	\$ 29.64	9.49
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PLUM0211-010 10/01/2015

PIPEFITTER (Including HVAC Pipe Installation)	\$ 33.13	10.31
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SHHEE0054-003 07/01/2014

SHEET METAL WORKER (Excludes HVAC Duct and Unit Installation)	\$ 25.67	12.39
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SUTX2014-023 07/21/2014

ACOUSTICAL CEILING MECHANIC	\$ 16.41	3.98
BRICKLAYER	\$ 19.86	0.00
CAULKER	\$ 15.36	0.00
CEMENT MASON/CONCRETE FINISHER	\$ 13.82	0.00
DRYWALL FINISHER/TAPER	\$ 16.30	3.71
DRYWALL HANGER AND METAL STUD INSTALLER	\$ 17.45	3.96
ELECTRICIAN (Alarm Installation Only)	\$ 17.97	3.37
ELECTRICIAN (Low Voltage Wiring Only)	\$ 18.00	1.68
FLOOR LAYER: Carpet	\$ 20.00	0.00
FORM WORKER	\$ 11.87	0.00
GLAZIER	\$ 19.12	4.41
INSULATOR – BATT	\$ 14.87	0.73
IRONWORKER, REINFORCING	\$ 12.10	0.00
LABORER: Common or General	\$ 10.79	0.00
LABORER: Mason Tender – Brick	\$ 13.37	0.00
LABORER: Mason Tender - Cement/Concrete	\$ 10.50	0.00
LABORER: Pipelayer	\$ 12.94	0.00
LABORER: Roof Tearoff	\$ 11.28	0.00
LABORER: Landscape and Irrigation	\$ 9.49	0.00
LATHER	\$ 19.73	0.00



OPERATOR: Backhoe/Excavator/Trackhoe	\$ 14.10	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	\$ 13.93	0.00
OPERATOR: Bulldozer	\$ 20.77	0.00
OPERATOR: Drill	\$ 16.22	0.34
OPERATOR: Forklift	\$ 15.64	0.00
OPERATOR: Grader/Blade	\$ 13.37	0.00
OPERATOR: Loader	\$ 13.55	0.94
OPERATOR: Mechanic	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	\$ 16.03	0.00
OPERATOR: Roller	\$ 16.00	0.00
PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping	\$ 16.77	4.51
ROOFER	\$ 15.40	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	\$ 17.81	2.64
SHEET METAL WORKER (HVAC Unit Installation Only)	\$ 16.00	1.61
SPRINKLER FITTER (Fire Sprinklers)	\$ 22.17	9.70
TILE FINISHER	\$ 12.00	0.00
TILE SETTER	\$ 16.17	0.00
TRUCK DRIVER: 1/Single Axle Truck	\$ 14.95	5.23
TRUCK DRIVER: Dump Truck	\$ 12.39	1.18
TRUCK DRIVER: Flatbed Truck	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck	\$ 12.50	0.00
TRUCK DRIVER: Water Truck	\$ 12.00	4.11
WATERPROOFER	\$ 14.39	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier. Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal

number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:



Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

- 4.) All decisions by the Administrative Review Board are final.

# CERTIFICATE OF INTERESTED PARTIES

Frost Construction Company, Inc.  
19506 Highway 59 North, Ste. 220  
Humble, Texas 77338  
Telephone: 281-446-6522  
Fort Bend County RFP 17-025  
Pinnacle Aquatics Fitness Center

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Frost Construction Company, Inc.  
Humble, TX United States

Certificate Number:  
2016-139326

Date Filed:  
11/22/2016

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County

Date Acknowledged:

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

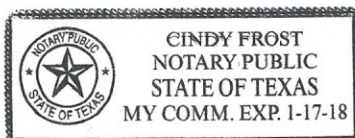
RFP 17-025  
Pinnacle Aquatics Fitness Center

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Frost Construction Company Inc.	Humble , TX United States	X	

5 Check only if there is NO Interested Party. ☐

**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



*Scott Frost*

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Scott Frost, this the 22 day of Nov.,  
20 16, to certify which, witness my hand and seal of office.

*Cindy Frost*

Signature of officer administering oath

Cindy Frost

Printed name of officer administering oath

Secretary

Title of officer administering oath