



Agenda of Regular Meeting

The Board of Trustees McAllen Independent School District

VISION	The McAllen Independent School District is a multicultural community in which students are enthusiastically and actively engaged in the learning process. Students demonstrate academic excellence in a safe, nurturing and challenging environment enhanced by technology and the contributions of the total community.
MISSION	The mission of the McAllen Independent School District is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community.
GOALS	<ol style="list-style-type: none">1. Student Achievement/Student Focus2. People Development3. Facility Priorities4. Financial Priorities
STRATEGIES	<ol style="list-style-type: none">1. Branding2. Attract/Retain High Quality Staff3. Engaging Learning Environment4. Rigorous/World Class Standards to Customize for Every Learner5. Partnerships with Business/Civic/Education/Organizations6. Future Ready Students7. Financial Priorities

A Regular Meeting of the Board of Trustees of the McAllen Independent School District will be held Monday, September 14, 2020, beginning at 5:00 PM by Video-conference or by Telephone call, www.mcallenisd.org or 956 618-6094, McAllen, TX 78501.

Items listed on this agenda may be taken in an order other than as shown on this agenda. Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

Attention: The regular business portion of the meeting for the public, beginning with agenda item #4, will begin at approximately 6:00 p.m.

At this meeting there may be discussion and action by the Board on the item(s) and subject(s) listed as follows:

1. **CALL MEETING TO ORDER**
2. **PUBLIC COMMENT(S)**
3. **RECESS TO CLOSED SESSION: Board of Trustees may go into Closed Session pursuant to Section(s) 551.071, 551.072, and 551.074 Texas Government Code, to discuss the following:**
 - A) Human Resources Recommendation(s) for School Year 2020-2021
 - B) Human Resources Employee Resignation(s) for School Year 2020-2021
 - C) Pending and/or Potential Litigation

D) Possible Real Estate Acquisition

4. RECONVENE IN OPEN SESSION

5. INVOCATION

6. PLEDGE OF ALLEGIANCE

7. SUPERINTENDENT'S REPORT(S) Improving Connectivity in McAllen

Presenter: Dr. J. A. Gonzalez, Superintendent

8. RECOGNITION(S)

A) Recognition of McAllen ISD and Business Services by the Association of School Business Officials

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

9. PROCLAMATION(S)

A) Approval of Proclamation Regarding National Suicide Prevention Awareness Month (September 2020)

Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

10. DONATION(S)

11. BOARD MEMBER(S), BOARD COMMITTEE(S) AND DISTRICT REPORT(S)

A) Board Committee Reports

1. Instructional Services Briefing - Chair - Sam Saldivar, Jr.
2. Human Resources Briefing - Chair - Tony Forina
3. District Operations Briefing - Chair - Debbie Crane Aliseda
4. Business Operations Briefing - Chair - Danny Vela

B) District Reports

1. Report Regarding City WiFi Map and Coverage for McAllen ISD Families

Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Report Regarding Phase-in Back to Traditional School Plan

Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

3. Report Regarding 2020 Summer School Programs

Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

4. Report Regarding Taxes Collected for July 2020

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

12. ACTION ON ITEM(S) IN CLOSED SESSION

A) Approval of Human Resources Recommendation(s) for School Year 2020-2021
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

B) Human Resources Employee Resignation(s) for School Year 2020-2021
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

C) Pending and/or Potential Litigation

D) Possible Real Estate Acquisition

13. CONSENT AGENDA ITEMS

A) Approval of Interlocal Cooperation Agreement No. 2021-140 with the City of McAllen for Food Service Permits

Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

B) Approval of Request for Proposal No. 2020-079R2 - Groceries, Food Items, Catering and Miscellaneous Items for Child Nutrition Program

Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

14. INSTRUCTIONAL SERVICES, INSTRUCTIONAL LEADERSHIP, HUMAN RESOURCES, DISTRICT OPERATIONS, BUSINESS OPERATIONS, AND BOARD OF TRUSTEES ITEMS

A) **Instructional Services Item(s)** (Dr. Silvia Ibarra) **Instructional Leadership Item(s)** (Bridgette Vieh)

B) **Human Resources Item(s)** (Todd Miller)

1. Approval of the Texas Association of School Board (TASB) Localized Policy Manual Update 115 (Second Reading)

Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

C) **District Operations Item(s)** (Arely Benavides)

1. Approval of Memorandum of Understanding with Hidalgo County for Placement of WiFi Tower on McAllen ISD Property

Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Approval of Competitive Sealed Proposal No. 2020-022 - Agricultural Learning Center

Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

D) **Business Operations Item(s)** (Cynthia Medrano Richards)

1. Approval of the McAllen Independent School District August Budget Amendment for Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Approval and Adoption of the Resolution for the 2020 Tax Rate
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

3. Approval of Update to MISD Policy CDA (LOCAL) - Other Revenues, Investments (Second Reading) and Resolution of the Board Regarding Review of the Investment Policy and Strategies

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

4. Consideration and Approval of an Order by the Board of Trustees of the McAllen Independent School District Authorizing the Issuance of Obligations Designated as "McAllen Independent School District Unlimited Tax Refunding Bonds, Series 2020"; Levying a Continuing Direct Annual Ad Valorem Tax for the Payment of the Bonds; Delegating the Authority to Certain Members of the Board of Trustees and District Staff to Execute Certain Documents Relating to the Sale of the Bonds;and Other Matters Incident and Related Thereto

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

5. Consideration and Approval of an Order by the Board of Trustees of the McAllen Independent School District Authorizing the Issuance of Obligations Designated as "McAllen Independent School District Unlimited Tax Refunding Bonds, Taxable Series 2020"; Levying a Continuing Direct Annual Ad Valorem Tax for the Payment of the Bonds; Delegating the Authority to Certain Members of the Board of Trustees and District Staff to Execute Certain Documents Relating to the Sale of the Bonds;and Other Matters Incident and Related Thereto

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

E) Board of Trustees Item(s)

1. Approval of Summative Evaluation - Superintendent's Performance Expectations Appraisal
2. Approval of Board of Education Meeting Minutes
 - a) Special Board Meeting - July 27, 2020 - 5:30 P.M.
 - b) Special Board Meeting - August 26, 2020 - 5:30 P.M.
 - c) Regular Board Meeting - August 31, 2020 - 5:00 P.M.
 - d) Special Board Meeting - September 3, 2020 - 5:30 P.M.

15. SCHEDULE OF FUTURE MEETINGS

A) Regular Board Meeting - September 28, 2020 - 5:00 P.M. - Virtual

B) Regular Board Meeting - October 13, 2020 - 5:00 P.M. - Virtual

16. **CLOSED SESSION: The Board of Trustees may reconvene in Closed Session for further discussion regarding the agenda item(s) listed.**

17. OPEN SESSION: The Board of Trustees may reconvene into Open Session for discussion regarding the agenda item(s) listed.

18. ADJOURNMENT

If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the Board will conduct a closed meeting in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, Subchapters D and E. Before any closed meeting is convened, the presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting.

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on August 7, 2020 at 4:00 P.M.

Natalia Goza

For the Board of Trustees

BOARD RECOGNITION FORM
McALLEN INDEPENDENT SCHOOL DISTRICT

Meeting Date (Recommended): September 14, 2020

Title of Recognition:

Photographer Requested: No

AV needs:

Approved for Recognition: _____



Superintendent

PROCEDURE FOR BOARD RECOGNITION


1. Fill out "Board Recognition Form" in its entirety at least 12 working days before the recommended date for presentation.
2. Submit completed form to Community Information Office with a cc to immediate supervisor and the Secretary to the Board of Trustees

Following the superintendent's executive team approval, confirmation of recognitions (year-at-a-glance) will be done via e-mail each week. Honorees are instructed to report to the Community Information office at 5:15 p.m. on their designated Board Meeting date.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: _____

SUPERVISOR: 
Arely Benavides (Sep 10, 2020 15:31 CDT)

Approved for presentation to the Board of Education:



7 _____
Superintendent of Schools

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: _____

SUPERVISOR: *Silvia Ibarra*
Silvia Ibarra (Sep 11, 2020 15:11 CDT)

Approved for presentation to the Board of Education:

J. A. Douglas

8 _____
Superintendent of Schools Sep 11, 2020









Board Report Phase-in Back to Traditional School Plan

Final Audit Report

2020-09-11

Created:	2020-09-11
By:	Mary Lopez(CO Inst Svcs) (mary.lopez2@mcallenisd.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAATaknQW9QN_0JBIfACOBZXUxuyBGwxUc9

"Board Report Phase-in Back to Traditional School Plan" History

-  Document created by Mary Lopez(CO Inst Svcs) (mary.lopez2@mcallenisd.net)
2020-09-11 - 8:10:07 PM GMT- IP address: 70.125.203.238
-  Document emailed to Silvia Ibarra (silvia.ibarra@mcallenisd.net) for signature
2020-09-11 - 8:11:00 PM GMT
-  Email viewed by Silvia Ibarra (silvia.ibarra@mcallenisd.net)
2020-09-11 - 8:11:34 PM GMT- IP address: 67.48.149.227
-  Document e-signed by Silvia Ibarra (silvia.ibarra@mcallenisd.net)
Signature Date: 2020-09-11 - 8:11:48 PM GMT - Time Source: server- IP address: 67.48.149.227
-  Document emailed to Jose Gonzalez (jose.gonzalez@mcallenisd.net) for signature
2020-09-11 - 8:11:49 PM GMT
-  Email viewed by Jose Gonzalez (jose.gonzalez@mcallenisd.net)
2020-09-11 - 8:12:40 PM GMT- IP address: 198.96.22.247
-  Document e-signed by Jose Gonzalez (jose.gonzalez@mcallenisd.net)
Signature Date: 2020-09-11 - 8:15:00 PM GMT - Time Source: server- IP address: 198.96.22.250
-  Signed document emailed to marta.garza2@mcallenisd.net, Mary Lopez(CO Inst Svcs) (mary.lopez2@mcallenisd.net), Jose Gonzalez (jose.gonzalez@mcallenisd.net), Silvia Ibarra (silvia.ibarra@mcallenisd.net), and 1 more
2020-09-11 - 8:15:00 PM GMT

Summer School 2020 Virtual Distance Learning



September 14, 2020

Silvia Ibarra, Ed. D.
Assistant Superintendent for Instructional Services



Purpose

The purpose of the summer school program is to offer educational opportunities for students in the following areas:

- ✓ Increase Graduation Rate;
- ✓ Decrease Dropout Rate;
- ✓ Increase College, Career, and Military Readiness and;
- ✓ Address State Required Mandates

Elementary School Level



Bilingual Summer Program

The purpose of this program is to provide English Learners with the opportunity to receive special instruction designed to prepare them to be successful in kindergarten and Grade 1. Instruction focuses on language development and essential knowledge and skills appropriate to the level of the student; and addresses the affective, linguistic, and cognitive needs of the English Learners.

Date: June 1 – 25
Hours: 8 am – 4 pm
Location: Alvarez Elementary
Perez Elementary

Summer 2019		Summer 2020	
Grade Level	Number of Students Participating	Grade Level	Number of Students Participating
PK	135	PK	43
Kinder	141	Kinder	34



Language Ignition Camp

The purpose of this program is to give opportunities for students to reinforce academic knowledge while developing language through fun and engaging literature, mathematics and science activities. Students reviewed skills and concepts learned in language arts, science, mathematics in an effort to bridge learning, prevent academic regression during the summer and promote literacy and language acquisition.

Date: June 1 – 18
Hours: 8 am – 1 pm
Location: Alvarez Elementary
Perez Elementary

Summer 2019		Summer 2020	
Grade Level	Number of Students Participating	Grade Level	Number of Students Participating
1 st -2 nd	N/A	1 st -2 nd	20
3 rd -4 th	N/A	3 rd -4 th	20
5 th -7 th ¹⁴	N/A	5 th -7 th	22

Middle School Level





Middle School Summer Program

The goal of the middle school virtual distance learning summer program was to provide sixth, seventh and eighth grade students additional instruction for course credit and grade promotion. Students had the opportunity to complete requirements for either the fall or spring semester classes during the virtual distance learning session.

Summer 2019								
	ELA		Math		Science		Social Studies	
Grade	No. Enrolled	No. Passing	No. Enrolled	No. Passing	No. Enrolled	No. Passing	No. Enrolled	No. Passing
6th	29	27	33	31	0	0	0	0
7th	32	30	22	20	0	0	0	0
8th	41	39	25	24	10	10	3	3
Total	102	96	80	75	10	10	3	3

Summer 2020								
	ELA		Math		Science		Social Studies	
Grade	No. Enrolled	No. Passing	No. Enrolled	No. Passing	No. Enrolled	No. Passing	No. Enrolled	No. Passing
6th	13	10	22	20	0	0	7	7
7th	29	28	41	36	20	17	2	1
8th	6	6	21	21	1	1	10	7
Total	48	44	84	77	21	18	19	15

Source: MS Virtual Distance Learning Program Attendance Rosters & Skyward Database, Summer 2020



Middle School Virtual Enrichment Math Camp

To promote the success of students in accelerated math programs where students complete 2 grade levels of mathematics in one school year by providing them an opportunity to enrich their math and problem-solving skills. In addition, students will build relationships with their teacher and classmates.

	Summer 2019	Summer 2020
6 th /7 th	0	220
Algebra Blended	0	300

High School Level





Grad Lab Summer Program (Credit Recovery)

10

To provide 9th-12th grade students the opportunity to regain credits needed towards promotion or graduation.

Campus	Summer 2019			Summer 2020		
	No. Of Students Enrolled	No. Of Students Earning Credit	Total Credits Earned	No. Of Students Enrolled	No. of Students Earning Credit	Total Credits Earned
McAllen HS	134	134	106.0	241	238	170.5
Memorial HS	116	116	125.5	168	168	151.5
Rowe HS	148	148	144.0	132	132	114.5
Lamar Options	53	38	37.0	32	29	38.5
AECHS	26	22	21.5	51	41	36.5
Total	477	458	434	624	609	511.5

Source: Grad Lab Credit Recovery Program Database and Student Attendance Rosters, Summer 2020



Success Academy (Credit Recovery)

To provide 9th-12th grade students the opportunity to regain credits needed towards promotion or graduation.

Campus	Summer 2019			Summer 2020		
	No. Of Students Enrolled	No. Of Students Earning Credit	Total Credits Earned	No. Of Students Enrolled	No. Of Students Earning Credit	Total Credits Earned
McAllen HS	0	0	0.0	107	107	79.0
Memorial HS	26	26	22.5	30	30	17.0
Rowe HS	0	0	0.0	104	104	102.0
Lamar Options	17	9	16.5	7	7	7.5
AECHS	5	5	4.0	5	4	3.0
Total	48	40	43.0	253	252	208.5

Source: Success Academy Program Database and Student Attendance Rosters, Summer 2020

Note: July 27-August 13 --Three Week Program



Migrant Education Program

Migrant Credit CAMP – Credit recovery for migrant 9th thru 11th graders, credit acceleration for incoming 9th graders (8th graders who have been promoted to 9th)

Date: June 1st - August 21st, 2020

Hours: 8 am – 5 pm (Monday thru Thursday)

Location: Crockett Annex / Migrant Dept.

	Summer 2019		Summer 2020	
Summer Camp 2020	# of Students	Credits Earned	# of Students	Credits Earned
Freshman Initiative	8	15	20	37.5
Credit Recovery	24	26.5	44	30.5
Total	32	41.5	64	68.5

** 100% Migrant Senior Graduation Rate, 6 years in a row

*** 100 % On - time for graduation of all migrant students in McAllen ISD for the 2019 – 2020 school year



Texas Success Initiative (TSI) Summer Camp

The goal of the camp was to prepare 9th – 11th grade students for the TSI Assessment for the opportunity to take dual enrollment college courses and for 12th grade students to meet their college admissions requirements. This program provided test preparation strategies in the areas of reading, writing, and mathematics. TSI Prep Camp dates: June 1st to 11th, TSI online testing dates: June 1st – 18th.

	McAllen High School	
	Summer 2019	Summer 2020
Subject	No. of Students attended & tested	No. of Students attended & tested
Reading /Writing	8	28
Math	5	27
Total	13	55

	Memorial High School	
	Summer 2019	Summer 2020
Subject	No. of Students attended & tested	No. of Students attended & tested
Reading /Writing	26	47
Math	10	48
Total	36	95

	Rowe High School	
	Summer 2019	Summer 2020
Subject	No. of Students attended & tested	No. of Students attended & tested
Reading /Writing	30	19
Math	32	21
Total	62	40



Texas Success Initiative (TSI) Summer Camp

Lamar TSI online tested 12th grade students this summer to meet college admissions requirements.. No TSI testing or camp occurred last year. They meet their dual enrollment requirements by testing during the year –during the day – mostly in the month of May.

AECHS usually has her summer bridge for incoming 9th and a TSI camp for current students who need to pass their TSI to meet dual enrollment requirements. During the 2020 summer, a virtual summer bridge without the online testing was conducted for the incoming 9th graders and TSI online testing without tutoring for those students who needed to meet the dual enrollment requirement. All of their seniors were TSI complete before graduation.

	Lamar Options	
	Summer 2019	Summer 2020
Subject	No. of Students Enrolled	No. of Students Enrolled
Reading/Writing	NA	11
Math	NA	13
Total	NA	15

	Achieve Early College High School		
	Summer 2019	Summer 2020	Summer 2020
Subject	No. of Students attended & tested	No of students attended	No. of Students tested
Reading/Writing	175	106	20
Math	175	106	15
Total	175	106	33
23			



ACT Exam Preparation Camp

The purpose was to provide ACT Examination preparation for the June and July ACT Examination.

Date: June 1 – 11, 2020

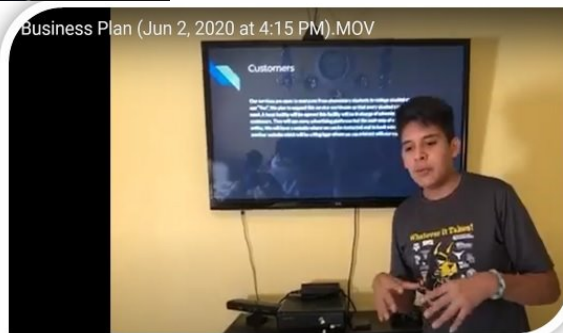
Hours: 8 am – 12 noon

	Summer 2019	Summer 2020	
Campus	No. Of Students	No. of Students	No. of Log-ins per week
McAllen HS	N/A	5	25
Rowe HS	N/A	8	31
Memorial HS	N/A	8	34
Lamar Academy IB	N/A	14	73
Achieve	24 N/A	7	31
Total		42	194



CTE Entrepreneurship Camp

The purpose of this Camp was to enhance students' program of study experience by helping them develop entrepreneurial skills aligned to their long-term college and career plan.



	Summer 2019		Summer 2020
DATES	GRADE	NO OF STUDENTS	NO OF STUDENTS
June 1-4	9 th -11 th	0	28
June 8-11	9 th -11 th	0	11



Advanced Academics STC Cyber Patriot and UTRGV TexPREP

The purpose of these programs is to expose students to advanced college and university programs that introduce and prepare students for college and workforce. The STC Cybersecurity program allows students to participate in CyberPatriot competitions. The TexPREP program serves academically talented students at various colleges and universities. July 2020 The UTRGV TexPREP program allows students the opportunity to explore engineering, mathematics and physics through classes at UTRGV.

STC Cybersecurity/CyberPatriot July 23 – 31 10 am – 12 pm		
Grade Level	Number of Students Participating	
	Summer 2019	Summer 2020
9/10	0	3
11/12	0	7

UTRGV TexPREP June 8 – July 17 1:00 pm – 6:00pm		
Grade Level	Number of Students Participating	
	Summer 2019	Summer 2020
6-8	65	57
9-11	22	14



Digital Learning ESports

The goal of the program was to promote eSports to middle and high school students and the art of competing virtually against other individuals..

Summer 2019	Summer 2020
No. Of Students	
0	16



Special Education Extended School Year, In-Class Support and Region Day School Program

Special Education Extended School Year: This is an individualized instructional program for eligible students with disabilities.

Special Education In-Class Support Services: This program is designed to support students in general education programs through In-Class Support

Regional Day School Program for the Deaf: The purpose of this program is to provide extended instruction and/or In-Class Support for RDSPD students

	Summer 2019		Summer 2020	
Summer Camp 2020	# of Students	Credits Earned	# of Students	Credits Earned
Extended School Year	6	N/A	4	N/A
Credit Recovery	97	105.5 28	123	130.5
Bilingual Program Dual Coded Students	26	N?A	9	N?A


Questions?



**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: 

SUPERVISOR: 

Approved for presentation to the Board of Education:


Superintendent of Schools

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
 MCALLEN I.S.D. TAXES COLLECTED FOR:
 JULY 2020

COMPARATIVE RATE OF COLLECTIONS

MCALLEN I.S.D. SML - 47	ORIGINAL TAX LEVY	COLLECTED TO DATE	DROPPED YRS AFTER PURGE	MODIF. TO DATE	TAXES OUTSTANDING	PERCENT 2020/2021	COLLECTED 2019/2020
2020 TAX ROLL					-	#DIV/0!	0.00%
2019 & PRIOR YRS ROLLBACK	7,532,806.64	375,905.12	(182,936.50)	(72,477.88)	6,901,487.14	5.17%	6.07%
	54,273.83	1,065.43		-	53,208.40	1.96%	0.00%
TOTALS	7,587,080.47	376,970.55	(182,936.50)	(72,477.88)	6,954,695.54		

BREAKDOWN OF TAX COLLECTIONS AND FEES FOR THE MONTH OF JULY 2020

	MCALLEN ISD	MONTHLY MODIFICATIONS
CURRENT YEAR-BASE TAX	-	CURRENT
CURRENT YEAR-P&I	-	
PRIOR YEARS-BASE TAX	375,905.12	(72,477.88) PRIOR
PRIOR YEARS-P&I	85,273.67	
ROLLBACK	1,065.43	- ROLLBACK
ROLLBACK P&I	-	
ATTORNEY FEES	48,713.82	(182,936.50) PURGED
TOTAL COLLECTIONS	510,958.04	(255,414.38)
LESS TRANSFERRED	332,460.32	
LESS IN TRANSIT	165,107.03	
LESS DUE TO HCAD COMM FEES	195.69	
LESS DUE TO CO TREASURER	13,195.00	
BALANCE	(0.00)	

*****AFFIDAVIT*****

I, PABLO "PAUL" VILLARREAL JR., ASSESSOR-COLLECTOR OF TAXES FOR THE MCALLEN I.S.D., DO SOLEMNLY SWEAR THAT THE ABOVE STATEMENT OF TAXES COLLECTED BY ME FOR THE MONTH OF JULY IS CORRECT.

Pablo (Paul) Villarreal Jr.

 ASSESSOR-COLLECTOR OF TAXES FOR MCALLEN I.S.D., TEXAS

SWORN AND SUBSCRIBED BEFORE ME THIS 10TH DAY OF AUGUST 2020 A.D.

Melinda Mendoza

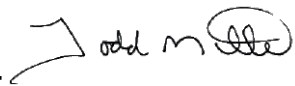
 NOTARY PUBLIC, HIDALGO COUNTY, TEXAS



**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: _____

SUPERVISOR: 

Approved for presentation to the Board of Education:

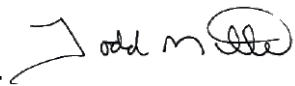


32 _____
Superintendent of Schools Sep 9, 2020

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: _____

SUPERVISOR: 

Approved for presentation to the Board of Education:



33 _____
Superintendent of Schools Sep 9, 2020

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: *Alexandra Molina*

SUPERVISOR: 
Arely Benavides (Sep 4, 2020 13:36 CDT)

Approved for presentation to the Board of Education:



34 _____
Superintendent of Schools

Request for Proposal No. 2020-079R2 - Groceries, Food Items, Catering and Miscellaneous Items for Child Nutrition Program

VENDOR	CONTACT INFORMATION	AWARD/DISCOUNT
1 Alpha Foods Co. 19802 G. H. Circle Waller, TX 77484	Phone: (936)372-5858 Fax: (936)372-1341 Arist G. Sarandos aesarandos@alphafoodsco.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
2 Atlantic Beverage Co., LLC 3775 Park Ave., Unit 12 Edinson, NJ 08820	Phone: (732) 902-4728 Fax: (732) 548-4858 Mitch Cohen Mitch.c@atlanticbeverageco.com	Qualified - Category A - Groceries / Category B - Food Items Category D - Miscellaneous Products Discount: 0% Discount
3 Brothers Produce 8024 Exchange Blvd. Austin, Texas 78754	Phone: (512) 928-0050 rzuniga@brothersproduceaustin.com info@brothersproduce.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
4 Buena Vista Foods 823 W. 8th Street Azusa, CA 91702	Phone: (626) 815-8859 Fax: (626) 629-1180 Laura Trujillo Ltruiillo@bvfoods.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
5 C.H. Guenther & Son dba Pioneer Flour Mills 2201 Broadway St. San Antonio. TX 78215	Phone: (210) 351-6208 Jeannie Barnes corporatebids@chg.com	Qualified - Category A - Groceries / Category B - Food Items Discount: 0% Discount
6 Coastal Deli Inc dba Jason's Deli 6000 South Staples Suite 300 Corpus Christi, TX 78413	Phone: (361) 854-5446 Robert Becquet, Director robert.becquet@jasonsdeli.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
7 Deanan Products, Inc. dba Deanan Gourmet Popcorn 216 Windco Circle Wylie, TX 75098	Phone: (972) 442-1500 Janet Aaron orders@deanan.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
8 Devin Distributing and Packaging Inc. P.O. Box 3928 McAllen, TX 78502	Phone: (281) 865-5616 Sandra Salinas asalinas@devindpi.com	Qualified - Category D - Miscellaneous Products Discount: 10% Discount

Request for Proposal No. 2020-079R2 - Groceries, Food Items, Catering and Miscellaneous Items for Child Nutrition Program

VENDOR	CONTACT INFORMATION	AWARD/DISCOUNT
9 Ekon-O-Pac LLC P.O. Box 1266 Gallatin, TN 37066	Phone: (615) 230-9340 Fax: (615) 451-4350 Tim West tim@ekonopac.com	Qualified - Category D - Miscellaneous Products Discount: 5% Discount
10 Goodman Food Products, Inc. dba Don Lee Farms 200 E. Beach Avenue Inglewood, CA 90302	Phone: (310) 674-3180 Fax: (310) 673-7008 Donald Goodman donald@donleefarms.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount Category A, Category C, & Category D / 2% Discount Category B
11 Gulf Coast Paper Co. 635 Billy Mitchell Blvd. Brownsville, TX 78521	Phone: (956) 541-2281 Fax: (956) 541-2018 Jorge Guerra GCPC415@aol.com	Qualified - Category D - Miscellaneous Products Discount: 40-50% Discount
12 J&J Snack Food Sales Corp. 6000 Central Highway Pennsauken, NJ 08109	Phone: (301) 447-2132 Fax: (909) 218-3927 Mimi Ford mford@jjsnack.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering Discount: 0% Discount
13 Jennie-O Turkey Stores Sales, LLC 2505 Willmar Ave SW Willamar, MA 56201	Phone: (320) 231-7175 Fax: (320) 231-2272 Rick Schwantes rlschwantes@j-ots.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
14 Labatt Institutional Supply Company dba Labatt Food Service LLC 902 North Expressway 77 Harlingen, TX 78550	Phone: (956) 428-0722 Fax: (956) 428-9016 Jesse Camacho jcamacho@labattfood.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
15 M-Amaya Inc dba Nothing Bundt Cakes 3400 W. Expressway 83, Bldg 700, Suite 740 McAllen, TX 78501	Phone: (956) 802-9501 Michael Amaya michaelamaya@nothingbundtcakes.com	Qualified - Category B - Food Items Discount: 10% Discount

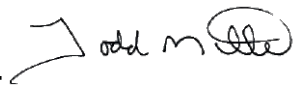
Request for Proposal No. 2020-079R2 - Groceries, Food Items, Catering and Miscellaneous Items for Child Nutrition Program

VENDOR	CONTACT INFORMATION	AWARD/DISCOUNT
16 Nicho Produce Co., Inc 925 N. 10th Ave. Edinburg, TX 78541	Phone: (956) 383-5633 Fax: (956) 380-3281 Tomas Villarreal Tommy@nichoproduce.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
17 Calfed Financial Corporation dba Red Gold LLC P.O. Box 83 Elwood, IN 46036	Phone: (765) 557-5500 Fax: (762) 252-1302 Josh Chaffin jchaffin@redgold.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
18 Rich Chicks, LLC 13771 S. Gramercy PL. Gardena, CA 90249	Phone: (209) 879-4104 Fax: (209) 879-0365 Karen Bates bids@richchicks.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
19 Schwan's Food Service, Inc. 115 West College Drive Marshall, MN 56258	Phone: (800) 533-5290 Fax: (507) 537-5218 Jerome Kivel SFSIBids@schwans.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 0% Discount
20 Tropical Paradise dba Cool Tropics 213 Burlington Road Bedford, MA 01730	Phone: (800) 510-8890 Stephen Dancey Bids@cool-tropics.com	Qualified - Category B - Food Items Discount: 0% Discount
21 UNO Foods, Inc. 180 Spark Street Brockton, MA 02302	Phone: (918) 861-7693 Michelle Berrios mberrios@unos.com	Qualified - Category A - Groceries Discount: 0% Discount
22 Valley Grocers LLC 634 E. Fronton St. Brownsville, TX 78520	Phone: (956) 542-3576 Fax: (956) 542-4129 David Cardona dcardona@valleygrocers.com	Qualified - Category A - Groceries / Category B - Food Items Category C - Catering / Category D - Miscellaneous Products Discount: 7% Discount

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: _____

SUPERVISOR: 

Approved for presentation to the Board of Education:




38 _____
Superintendent of Schools **Sep 9, 2020**

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: _____

SUPERVISOR: 
Arely Benavides (Sep 11, 2020 16:44 CDT)

Approved for presentation to the Board of Education:




39 _____
Superintendent of Schools

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: 

SUPERVISOR: 
Arely Benavides (Sep 4, 2020 09:15 CDT)

Approved for presentation to the Board of Education:



40 _____
Superintendent of Schools

Competitive Sealed Proposal No. 2021-022 McAllen ISD Agricultural Learning Center

Competitive Sealed Proposal No. 2021-022 McAllen ISD Agricultural Learning Center		Vendor:	Celso Gonzalez Construction, Inc.	D Wilson Construction Co.	E-Con Group, LLC	Gerlach Builders LLC dba Wll-Con	Holchemont, Ltd.	NM Contracting
13	State the frequency safety inspections are conducted for projects	1	1	1	1	1	1	1
14	Attach your company's drug/alcohol prevention policy and/or procedures.	1	1	1	1	1	1	1
15	Select the correct statement: <ul style="list-style-type: none"> General Contractor and will utilize 100% of your own forces. Describe the sufficient resources your company has to manage staff and successfully perform the work Joint venture or other type of arrangement. Describe type of arrangement. If using subcontractors, list the subcontractors by trade that will be assigned to this project. 	1	1	1	1	1	1	1
16	List names of individuals and their job descriptions for Project Manager, Assistant Project Manager, Project Superintendent, Assistant Project Superintendent and MEP Quality Control Specialist who will be assigned for the entire duration of the Project. Attach resumes and include details listed in section 11.18 of the CSP <ul style="list-style-type: none"> Amount of time assigned to project; Years of experience; Relevant K-12 experience; Certifications 	2	2	2	2	2	2	2
17	Attach a letter from your surety company addressing the following points. 1) Surety Company <ul style="list-style-type: none"> Listed in the State Board of Insurance, Bond Department's "List of Insurance Companies Licensed to Write Fidelity and Surety Bonds in Texas (http://www.tdi.texas.gov/commercial/pcbond.html) https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm Is authorized to do business in Texas and is authorized to do business up to the limit of the contract. Holds a certificate of authority from the U.S. Secretary of Treasury or has obtained reinsurance for any liability in excess of \$100,000. AM Best Rating 2) Contractor <ul style="list-style-type: none"> Maximum bonding limit for the contractor Aggregate/total available limit of coverage. Years doing business with surety 	2	2	2	2	2	2	2
18	List projects that your company currently has in progress. For each project listed address the following points: <ul style="list-style-type: none"> Name of project; Owner's contact person and phone number; Architect, Architect's contact person and phone number; Contract amount; Percent complete; Scheduled completion date; List total worth of work in progress and under contract 	1	1	1	1	1	1	1
19	Attach a CURRENT financial statement <ul style="list-style-type: none"> Balance and income statement (indicating current assets, net fixed assets, other assets, current liabilities and other liabilities) Financial statement (indicating name and address of firm preparing financial statement, and date thereof; If the financial statement is not for the identical organization submitting offer, explain the relationship and financial responsibility of the organization whose financial statement is provided (parent, subsidiary, etc.) 	2	2	2	2	2	2	2
20	Select your company's Dun & Bradstreet risk indicator and attach documentation (risk indicator 1 – 4): (1 pt.)	1	1	1	0	0	1	1
19	Bid Bond	1	1	1	1	1	1	1
20	Attach a proposed project schedule/timeline	2	2	2	0	0	2	2
				42	None provided	None provided		
					Not provided.	Not provided		

Competitive Sealed Proposal No. 2021-022 McAllen ISD Agricultural Learning Center

Competitive Sealed Proposal No. 2021-022 McAllen ISD Agricultural Learning Center

Vendor:

		Peacock General Contractors Inc.	R. E. Friedrichs Company dba REFCO	Rigney Construction LLC	Scoggins Construction Company, Inc.	
	Rank →→	4	10	2	8	
	Total Points°	100.00	87.87	65.25	91.70	
1	AMOUNT/BASE BID (CONTINGENCY INCLUDED)	Max. Pts ↓	\$3,240,000.00	\$3,247,477.00	\$2,930,000.00	\$3,680,000.00
	Proposed construction contract price (Base price). Contract price shall include both base price and total alternate price. Final weighting distribution between base Price and total of alternates will be a calculated percentage.	60	50.4	50.3	55.7	44.3
2	List three (3) references of current or past projects completed within the past five (5) years of similar scope and size	3	3	2	2	3
	<ul style="list-style-type: none"> The quality of the work provided by bidder. The bidder's history of providing warranty documents. The bidder's history of timeliness in completing warranty work. The bidder's history of staying on schedule. The bidder's cooperative attitude when working with the owner and its architect in resolving construction issues. The bidder's history of providing detailed documentation and a fair assessment of change order pricing. The bidder's history of repeat business with owner(s). 					
	<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>			<i>1/3 did not meet size; 1/3 did not meet scope</i>		
3	List any claims, judgments, arbitration proceedings or suits pending or outstanding against your company or its officers. If any, summarize the nature of the claims.	1	1	1	1	1
4	List current or past MISD projects completed within the past five (5) years of similar scope and size where you have been the "Prime Contractor".	1	0	0	0	0
	<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>		<i>None listed</i>	<i>None listed</i>	<i>None listed</i>	<i>None listed</i>
5	List three (3) current or past K-12 projects completed within the past five (5) years of similar scope and size where you have been the "Prime Contractor".	3	3	0	3	3
	<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>			<i>Listed 1 project. Not same size nor scope.</i>		
6	List current or past Non K-12 projects completed within the past five (5) years of similar scope and size where you have been the "Prime Contractor".	3	3	0	3	3
	<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>			<i>None listed</i>		
7	List and attach three (3) references from major suppliers and/or sub-contractors within the past two (2) years which specifically address a) history of paying sub-contractors b) providing materials on time (Reference letters must be dated).	3	3	0	3	3
				<i>Letters not included</i>		
8	List your company's history of on-time project completion (based on responses stated in questions 4-6)	3	3	0	3	3
				<i>Projects not relevant to question.</i>		
9	List your company's history of repeat business with project owner(s) for similar scope and size.	1	1	1	1	1
10	Attach "Workers Compensation Experience Rating" for the last three (3) years and the corresponding letter from your insurance agent (from 2017 to present).	3	1.5	0	2	2
			<i>Form not provided</i>	<i>None provided</i>	<i>1/3 missing</i>	<i>1/3 missing</i>
11	Attach "OSHA Form 300 Log of Work-Related Injuries and Illnesses" for the last three (3) years addressing the following: Number of injuries and illnesses; Number of lost time accidents; Number of recordable cases; Number of fatalities; Number of employee direct hire fixed hours worked (round to 1,000's)	3	3	0 43	3	3
				<i>None provided</i>		
12	Attach your company's safety orientation & program manual and/or procedures.	2	2	2	2	2

Competitive Sealed Proposal No. 2021-022 McAllen ISD Agricultural Learning Center

Competitive Sealed Proposal No. 2021-022 McAllen ISD Agricultural Learning Center		Vendor:	Peacock General Contractors Inc.	R. E. Friedrichs Company dba REFCO	Rigney Construction LLC	Scoggins Construction Company, Inc.
13	State the frequency safety inspections are conducted for projects	1	1	0	1	1
				<i>Not provided</i>		
14	Attach your company's drug/alcohol prevention policy and/or procedures.	1	1	1	1	1
15	Select the correct statement: <ul style="list-style-type: none"> General Contractor and will utilize 100% of your own forces. Describe the sufficient resources your company has to manage staff and successfully perform the work Joint venture or other type of arrangement. Describe type of arrangement. If using subcontractors, list the subcontractors by trade that will be assigned to this project. 	1	1	1	1	1
16	List names of individuals and their job descriptions for Project Manager, Assistant Project Manager, Project Superintendent, Assistant Project Superintendent and MEP Quality Control Specialist who will be assigned for the entire duration of the Project. Attach resumes and include details listed in section 11.18 of the CSP <ul style="list-style-type: none"> Amount of time assigned to project; Years of experience; Relevant K-12 experience; Certifications 	2	2	2	2	2
17	Attach a letter from your surety company addressing the following points. 1) Surety Company <ul style="list-style-type: none"> Listed in the State Board of Insurance, Bond Department's "List of Insurance Companies Licensed to Write Fidelity and Surety Bonds in Texas (http://www.tdi.texas.gov/commercial/pcbond.html) https://www.fiscal.treasury.gov/fsreports/ref/suretyBncd/c570_a-z.htm Is authorized to do business in Texas and is authorized to do business up to the limit of the contract. Holds a certificate of authority from the U.S. Secretary of Treasury or has obtained reinsurance for any liability in excess of \$100,000. AM Best Rating 2) Contractor <ul style="list-style-type: none"> Maximum bonding limit for the contractor Aggregate/total available limit of coverage. Years doing business with surety 	2	2	2	2	2
18	List projects that your company currently has in progress. For each project listed address the following points: <ul style="list-style-type: none"> Name of project; Owner's contact person and phone number; Architect, Architect's contact person and phone number; Contract amount; Percent complete; Scheduled completion date; List total worth of work in progress and under contract 	1	1	0	1	1
				<i>None provided</i>		
19	Attach a CURRENT financial statement <ul style="list-style-type: none"> Balance and income statement (indicating current assets, net fixed assets, other assets, current liabilities and other liabilities) Financial statement (indicating name and address of firm preparing financial statement, and date thereof; If the financial statement is not for the identical organization submitting offer, explain the relationship and financial responsibility of the organization whose financial statement is provided (parent, subsidiary, etc.) 	2	2	2	2	2
20	Select your company's Dun & Bradstreet risk indicator and attach documentation (risk indicator 1 – 4): (1 pt.)	1	1	0	0	0
				<i>None provided</i>	<i>None provided</i>	<i>None provided</i>
19	Bid Bond	1	1	1	1	1
20	Attach a proposed project schedule/timeline	2	2	0	2	2
				<i>Not provided</i>		

AIA[®] Document A101[™] – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year 202__
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

McALLEN INDEPENDENT SCHOOL DISTRICT
2000 North 23rd Street
McAllen, Texas 78501

and the Contractor:
(Name, legal status, address and other information)

for the following Project:
(Name, location and detailed description)

The Architect:
(Name, legal status, address and other information)

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101[™]-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201[™]-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A MODIFIED AIA DOCUMENT A201-2007, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
EXHIBIT B CONTRACTOR'S PROPOSAL
EXHIBITS C PAYMENT AND PERFORMANCE BONDS
EXHIBIT D CONTRACTOR'S INSURANCE CERTIFICATES
EXHIBIT E PLANS AND SPECIFICATIONS

INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), all sections of the Project Manual, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute and achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

By the following date:

Final Completion shall be 30 calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
<input type="text"/>	<input type="text"/>

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$), subject to additions and deductions as provided in the Contract Documents. The Contract Sum consists of two portions, the budgeted amount of Dollars and Cents (\$) and a contingency of Dollars (\$) as specified in Section 4.3 below. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Contractor acknowledges and agrees that the contingency portion of the Contract Sum set forth in Section 4.3 shall not be due or payable unless and to the extent that Owner authorizes such expenditure in writing. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
<input type="text"/>	<input type="text"/>

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
Contingency	\$[<input type="text"/>]

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

[Unit prices for certain components are specified in the bidding form attached hereto as part of Exhibit B. Such prices are only applicable in the event Owner opts to increase or decrease the number of required components.]

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

§ 4.5.1 **Substantial Completion.** Owner and Contractor recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in Article 3, plus any extension thereof in accordance with Article 8 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner [] Dollars and Zero Cents (\$[].00) per calendar day for each day after the Substantial Completion date noted in Article 3 until the Work is substantially complete.

§ 4.5.2 **Final Completion.** In addition, timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Work within 30 calendar days of the Substantial Completion date (subject to adjustment of such date in accordance with the terms hereof). It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor and Owner also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner [] Dollars and Zero Cents (\$[].00) per calendar day for each day after the Final Completion date noted in Article 3 until the Work is substantially complete.

§ 4.5.3 *It is expressly understood that the said sum per day set forth in this Section 4.5 is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.* It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from any Payment made to the Contractor any sums due from Contractor to Owner pursuant to Section 4.5 above.

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 4.6.1 **Commitment of Current Revenues Only.** In the event that during any term hereof, the governing body of any local government party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each government party hereto pursuant to the provisions of Texas Local Government Code §271.903.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the fifth day following approval by the Board of Trustees or as otherwise required by applicable law .
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum less any unused Owner's contingency among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and the Architect may require. This schedule of values, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified to the extent approved by the Owner in writing, as provided in Section 7.3.9 of AIA Document A201.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201 or amounts certified by the Architect and disputed by the Owner; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five percent (5%) if the amount set forth in Section 4.1 above for the Contract Sum is at least Four Hundred Thousand Dollars (\$400,000.00) and ten percent (10%) if such amount is less than Four Hundred Thousand Dollars (\$400,000.00).

(Paragraphs deleted)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

None.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

Retainage on any incomplete Work and Unsettled claims.

(Paragraph deleted)

§ 5.1.9 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.10 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

§ 5.1.11 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claim.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum minus disputed sums, authorized deductions and liquidated damages, shall be made by the Owner to the Contractor after

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;
- .3 the Contractor has provided the following documents:
 - .1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;
 - .2 Final list of subcontractors (AIA Document G705);
 - .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at: www.tea.state.tx.us/school.finance/facilities/cert_2004.pdf;
 - .4 Contractor's warranties, organized as required elsewhere in the Contract Documents;
 - .5 Maintenance and Instruction Manuals;
 - .6 Owner's Final Completion Certificate; and
 - .7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the

Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes;

- .4 a final Certificate for Payment has been issued by the Architect; and
- .5 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, and upon acceptance by the Owner and Architect, and after satisfactory evidence has been given by the Contractor that all of the Contractor's bills have been paid and the entire Project is free from liens.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest pursuant to Texas Government Code §2251.025. *(Insert rate of interest agreed upon, if any.)*

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*



§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201, the method of binding dispute resolution shall be as follows: *(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 All references to AIA Document A201-2017, AIA Document A201-2007, AIA Document A201 or the A201, shall mean to the modified A201-2007 attached hereto as Exhibit "A". Similarly, references to AIA Document A101-2017, AIA Document A101-2007 or to the A101 shall mean to this A101-2017. Where reference is made in this

Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

Mr. Ruben Trevino
McAllen Independent School District
20000 N. 23rd St.
McAllen, TX 78501-6126

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)



§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Article II of the AIA Document A201. The Contractor's insurance certificates are attached hereto as Exhibit "D".

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A201. The original bonds required pursuant to Section 11.4 of the A201 and this Section 8.5 are attached to the Owner's execution original of this Agreement as Exhibit "C" with a copy of the bonds attached as Exhibit "C" to the Contractor's execution original.

(Paragraphs deleted)

§ 8.7 Other provisions:

§ 8.7.1 The Agreement shall be governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue shall be in Hidalgo County, Texas.

§ 8.7.2 As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

§ 8.7.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Contract.

§ 8.7.4 Contractor acknowledges that the Owner retained the party set forth above under "Architect" above to provide certain design, contract administration and/or other services for the Project, and may not have used an AIA document for the contract with such party. All references in the Contract Documents to the Architect shall be to the entity named on the first page as the "Architect". The parties acknowledge and agree that, notwithstanding any other provision in the Contract Documents, the Owner is not obligated to retain an architect for the Project and the Owner makes no representations about the party set forth above under "Architect" being an architect.

§ 8.7.5 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance.

§ 8.7.6 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 8.7.7 Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.

§ 8.7.8 The Contractor may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent Contractor from engaging subcontractors to perform various phases of the Project, but Contractor shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 8.7.9 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§ 8.7.10 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

§ 8.7.11 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 8.7.12 Contractor stipulates that Owner is a political subdivision of the State of the Texas, and, as such, enjoys immunities from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.

§ 8.7.13 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract.

§ 8.7.14 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 This executed AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2007, General Conditions of the Contract for Construction

(Paragraphs deleted)

(as modified and attached hereto as Exhibit "A")

(Paragraph deleted)

.3 Drawings attached hereto as part of Exhibit "E".

Number	Title	Date

.4 Specifications attached hereto as part of Exhibit "E".

Section	Title	Date	Pages

.5 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.6 The following Exhibits, which are attached hereto:

- .1 Exhibit A The modified AIA Document A201–2007, General Conditions of the Contract for Construction.
- .2 Exhibit B Contractor’s Proposal
- .3 Exhibits C Payment and Performance Bonds
- .4 Exhibit D Contractor’s Insurance Certificates
- .5 Exhibit E Plans and Specifications

This Agreement entered into as of the day and year first written above.

OWNER:

CONTRACTOR:

McALLEN INDEPENDENT SCHOOL DISTRICT

[]

By: _____

By: _____

Printer Name:

Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____

Stephen L. Crain

EXHIBIT A

to

(Paragraph deleted)

Agreement dated [, 20], between
McAllen Independent School District and []
(CSP 20__-__ [])

Modified AIA Document A201-2007 General Conditions of the Contract for Construction

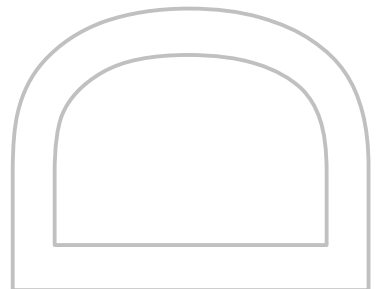
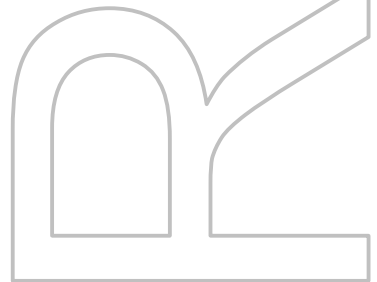
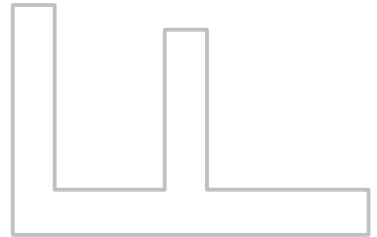
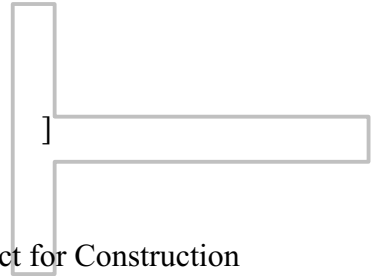


EXHIBIT B

to

Agreement dated [, 20], between
McAllen Independent School District and []
(CSP 20__-__ [])
Contractor's Proposal



EXHIBIT C

to

(Table deleted)

Agreement dated [, 20], between
McAllen Independent School District and []
(CSP 20__-__ [])

Payment Bond

and

Performance Bond



(Table deleted)

EXHIBIT D

to

Agreement dated [, 20], between
McAllen Independent School District and []
(CSP 20__-__ [])

Contractor's Insurance Certificates

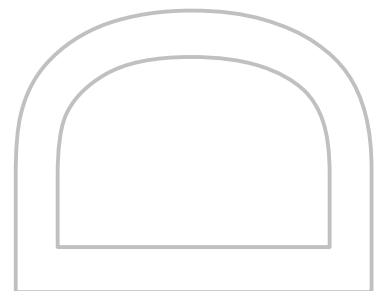
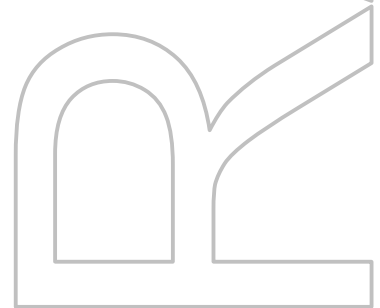
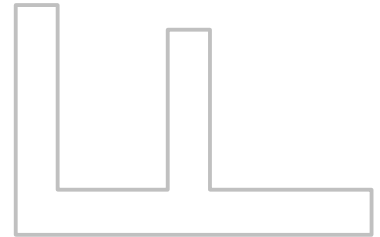
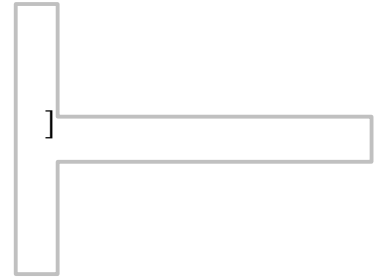


EXHIBIT E

to

Agreement dated [, 20], between
McAllen Independent School District and []
(CSP 20__-__ [])

Plans and/or Specifications

(Table deleted)



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

THE OWNER:

(Name, legal status and address)

McALLEN INDEPENDENT SCHOOL DISTRICT
2000 North 23rd Street
McAllen, Texas 78501

THE ARCHITECT:

(Name, legal status and address)

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect pursuant to Section 7.4. At the Owner's option, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.1.1 Contractor acknowledges and warrants that it has closely examined all the Contract Documents and is unaware of any instance where the documents are not suitable or are insufficient to enable the Contractor to complete the Work in a timely manner for the Contract sum, and that they include all Work, whether or not shown or described, which reasonably may be inferred or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor (except as provided in Sections 5.3 and 5.4 hereof), (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations of the Contractor under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.3.1 The Work shall include the obligation of the Contractor to visit the site of the Project before submitting a proposal. Such site visit shall be for the purpose of familiarizing Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas. It also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams wherever located and whenever issued.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves have been referred to Owner and Architect by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all bidders.

If such differences or conflicts were not called to Owner's and Architect's attention prior to submission of bids, Architect shall decide which of the conflicting requirements will govern based upon the following: the most stringent of the requirements will take precedence over the less stringent; the most expensive item will take precedence over the less expensive, and subject to the approval of Owner, Contractor shall perform the Work at no additional cost and/or time to Owner in accordance with the Architect's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable as being necessary to produce the intended results.

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 The Agreement;
- .2 Addenda, with those of later date having precedence over those of earlier date;
- .3 Supplemental Conditions, if any;
- .4 The General Conditions of the Contract for Construction;
- .5 Specifications
- .6 Drawings, in the case of inconsistency between the Drawings and Specifications or within either document, not clarified by Addendum, the better quality or greater quantity of Work shall be included in the Contract Documents. Clarifications of the inconsistency will be accomplished with the Contractor and, if necessary, an appropriate reduction in the contract will be accomplished by Change Order. Figures given on drawings govern scale measurements. Large scale drawings take precedence over small scale drawings. Written words take precedence over numbers. Handwritten documents take precedence over typewritten documents. Existing conditions take precedence over drawings and specifications for dimensions and shall be verified by the Contractor. The Contractor proceeds at his own risk if conflicts or discrepancies are not resolved prior to the execution of the Work.

§ 1.2.1.2 If Work is required in a manner to make it impossible to produce Work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, Contractor shall request in writing an interpretation from Architect before proceeding with the Work. If Contractor fails to make such request, no excuse will thereafter be entertained for failure to carryout Work in the required manner or provide required guarantees, warranties, or bonds, and Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 Instruments of Service, including the Drawings, Specifications, and other similar or related documents and copies thereof are furnished to Contractor for the purpose of performing the Work and are, and shall remain, the property of Owner and Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Owner's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees of Owner, by majority vote, is the only representative of Owner, having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum, or agree to an extension of the contractual completion date. The Board shall designate, as appropriate, an authorized representative(s) to act on its behalf during the course of construction. In the event that an emergency changes the scope of the Work before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representative(s) may approve construction changes that do not exceed \$5,000.00 in increased costs. Any such changes shall be confirmed in writing between the Contractor and the Board's authorized representative(s) and notice of such approved changes shall be given to the Board at its next regular meeting. The Board will act as soon as reasonably possible to avoid undue delays in the construction completion date.

§ 2.1.2 DELETED.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics and legal limitations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. In connection with the foregoing, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work) all utilities lines, telephone company, cable, sewer lines, water pipes, gas lines, and electrical lines, including without limitation, all buried pipelines and buried telephone cables and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines. Under this provision the Architect and Engineer are in no way relieved of their responsibilities outlined in the Contract or other attached contracts for identification of existing conditions.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2 for use on this Project. All costs of reproduction are the responsibility of Contractor.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's or, if applicable landlord's, property by anyone claiming by, through, or under Contractor, or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3 and any delay resulting from such Work stoppage shall not extend any Milestone Date identified in the Contract for Construction or the required dates of Substantial or Final Completion.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.1 The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express

authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner in writing any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.

§ 3.2.5 The Contractor shall not be entitled to additional compensation for the "rework portion" of any additional work caused by his failure to carefully study and compare the Contract Documents prior to execution of the Work.

§ 3.2.6 The Contractor shall make reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the Contractor's field superintendent's personal inspection of the work and his determination that the work complies with the Contract Documents.

§ 3.2.7 If, in the opinion of the Architect, the Contractor does not make a reasonable effort to comply with the above requirements of the Contract Documents and this causes the Architect or Architect's consultants to expend an unreasonable amount of the time in the discharge of the duties imposed on Architect by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to Sections 3.2.6, 3.2.7, and 3.12 before additional services are performed.

§ 3.2.8 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his Warranty, Contractor shall promptly

notify the Architect in writing, providing substantiation for the position. Any necessary changes, including substitutions of materials, may only be accomplished by an appropriate Modification.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work under Contract Documents or other arrangements with Contractor.

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.6 Contractor shall be responsible for inspection of portion of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including of construction utilities.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the buildings and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner (s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper

correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all Work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said Work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elections shown on the Drawings and Specifications or found in previous Work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§ 3.3.11 Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. Contractor shall be liable for all property damage, including repairs and replacements of the Work and economic losses, which proximately result from the breach of this duty. Contractor shall advise Architect:

- .1 if a specified product deviates from good construction practices;
- .2 if following the Specifications will affect any warranties; or
- .3 any objections which Contractor may have with the Specifications.

Nothing contained in Section 1.1.3 shall alter the responsibilities established in this Section.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making requests for substitutions based on Section 3.4.2, Contractor:

- .1 represents that Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that Contractor will provide the same warranty for the substitution that Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation for the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgments as an experienced Contractor to adopt and implement policies and practices designed to avoid Work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Section 8.3 hereof, Contractor shall be liable to Owner for all damages suffered by Owner.

§ 3.4.4 Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with manufacturer's directions. Contractor shall, if required by Owner or Architect, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

§ 3.4.5 When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents.

§ 3.4.6 When the manufacturer's name, patent numbers, underwriter's labels, model numbers or similar identifying marks are required, such markings shall be located as inconspicuously as possible.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of the best quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 ALL WARRANTIES SHALL INCLUDE LABOR AND MATERIALS AND THE MANUFACTURER'S WARRANTY SHALL BE SIGNED BY SUBCONTRACTOR AND COUNTERSIGNED BY CONTRACTOR. ALL WARRANTIES SHALL BE ADDRESSED TO OWNER AND DELIVERED TO ARCHITECT UPON COMPLETION OF THE WORK AND BEFORE OR WITH THE SUBMISSION OF REQUEST FOR FINAL PAYMENT.

§ 3.5.3 Contractor shall issue in writing to Owner as a condition precedent to final payment a "general warranty" reflecting the terms and conditions of this Section 3.5 for all Work under the Contract.

§ 3.5.4 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after final completion of the entire Work unless a longer time is specifically called for in the specifications. The Contractor shall assign all components, equipment and fixture warranties to the Owner and will deliver all manuals to the Owner at the completion of construction.

§ 3.5.5 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to Owner.

§ 3.5.6 Warranties shall become effective on a date established by Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties.

§ 3.5.7 If Architect considers it impractical, because of unsuitable test conditions or some other factors, to execute simultaneous final acceptance of all equipment, portions of properly installed and functioning equipment may be certified by Architect for final acceptance, subject to Owner's approval, when that portion of the system is complete and ready for operation as called for under Section 9.8.1.

§ 3.5.8 Contractor shall warrant for a period of twelve (12) months that the building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Contractor's control. Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at its own expense, do any Work necessary to make the building(s)

watertight. Contractor shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of this water penetration, to return the building(s) to its (their) original condition.

§3.5.9 In addition to the foregoing stipulations, Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

§3.5.10 If for any reason Contractor cannot warrant any part of the Work using material or construction methods that have been specified, or shown, it shall notify Owner and Architect in writing before the Contract is signed, giving reasons, together with the name of product and data on a substitution it can warrant.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall make application, secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract, including without limitation, street openings, sidewalk, and other obstructions, access over public ways and storage necessary for proper execution and which are, legally required at the time bids are received or negotiations concluded.

§3.7.1.1 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency and state and local authorities, that require completion of documentation and/or acquisition of all permits for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during construction phase which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

- a. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.
- b. The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, Inspection Fees and Plan Checking Fees; temporary utility charges, tap charges and water meter charges and any other similar fees assessed by jurisdictional authorities having control over the Project.
- c. The Owner shall pay fees payable to the Texas Department of Licensing and Regulations (TDLR) for document review relative to the Elimination of Architectural Barriers Act and the Architect will submit the documents to the TDLR for review and approval.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work (including, without limitation, the installation of any materials or equipment) that it knows or reasonably should have known would be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the

Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner in writing an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or based on data provided to Contractor and by the Contractor's prior inspections, tests, reviews, and pre-construction services for the Project; or by the Contractors inspections, tests, reviews and pre-construction services that Contractor had the opportunity and obligation to make in connection with the Project but did not do so.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. If a decision is needed to avoid a delay, Contractor shall notify Architect and Owner in writing sufficiently in advance of needed date to allow reasonable time for selections to be made.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Architect, unless the superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architects object to any nominated superintendent. Such approval by the Owner shall not be unreasonably withheld.

§ 3.9.3 DELETED.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to Architect with Contractor's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets such a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to Architect and Owner for their review and approval a narrative description of the means and methods that Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the schedule.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's approval. The Architect's and Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of a Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and cost to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

- .1 provide a graphic representation of all activities and events that will occur during performance of the Work;
- .2 identify each phase of construction and occupancy; and
- .3 set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents hereinafter referred to as Milestone Dates.

§ 3.10.5 The Owner shall have the right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any rescheduling of performance of the Work under this Section 3.10.5 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1 and an equitable adjustments in the Contract Sum, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling is required for the convenience of the Owner and is not attributable to any act of omission of Contractor, and (3) if Owner agrees to the Contract Sum adjustment prior to any rescheduling.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections (all changes and selections to be approved by Owner and Architect in advance) made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 At the Date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to Architect for submittal to Owner: Record Drawings showing the field changes and selections (all changes and selections to be approved by Owner and Architect in advance) affecting the general construction, mechanical, electrical, plumbing, and all other Work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of Architect's Drawings obtained and paid for by Contractor. Contractor shall maintain at the job site one (1) set of Architect's Drawings and indicate thereon each field change as it occurs. The Contractor shall post all Addenda on Construction Documents prior to commencing work on the site.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent re-submittal. Additional service charges as outlined in Section 3.2.7 may be charged by the Architect in this event.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop

Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional who shall comply with requirements of Owner regarding qualifications and insurance, and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Contractor shall submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least 30 days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, the Contractor shall submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within four weeks of the date of the Contract for construction.

§ 3.12.12 The Contractor shall submit the number of copies of Shop Drawings, Product Data, Samples and similar submittals which the Contractor and his Subcontractors need for their use plus two additional sets for the Architect and one additional set for each of the Architect's consultants involved with the particular section of work. Where shop drawings are involved, the Contractor shall submit one high quality reproducible transparency and one opaque print of the shop drawing for the Architect plus one additional opaque print for each of the Architect's consultants involved with the particular section of work. The reproducible transparency will be marked by the Architect and/or his consultants and returned to the Contractor for his use, distribution, correction or re-submittal as required. The Architect and his consultants will retain the marked up prints. After final review and correction of the submittal, the Contractor shall send two corrected sets to the Architect, and one to each of the Architect's consultants involved with the particular section of work.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.1 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§3.13.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without written consent of the Owner.

§3.13.3 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision on the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of: (1) any area and buildings adjacent to the site or the Work or (2) the Building in the event of partial occupancy.

§3.13.4 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrance and parking areas other than those designated by Owner. Without limitation of any other provisions of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Prior to the Architect's inspection for Submittal Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roof, gutters and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Owner, the Board of Trustees of Owner, all elected officials, employees and agents of Owner and of any of the above mentioned parties (the "Indemnified Parties") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty, or cause of action (including attorneys' fees), directly or indirectly arising out of, resulting from, or related to (in whole or in part), (1) the Work performed hereunder, (2) the Contract, or (3) the act or omission of Contractor, a Subcontractor, or an individual, partnership, joint venture, corporation or other entity (a) directly or indirectly employed by Contractor or a Subcontractor, or (b) for whose acts or omissions Contractor or a Subcontractor may be liable (excluding property damage to the Work itself, covered by Owner's all-risk builder's risk insurance, subject to Contractor's liability for any deductible amounts thereunder). The obligations of Contractor under this indemnification shall apply to all matters except those arising solely from the wanton and willful negligence or the malicious acts or omissions of Owner. Further, the obligations of Contractor under this indemnification shall not extend to the liability of Architect, its agents, or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, (2) the giving of or failure to give directions or instructions by Architect, its agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage, or (3) any matter prohibited by Section 130.002, Texas Civil Practice and Remedies Code. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding, or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and Owner, and Owner shall have reasonably concluded that there may be legal defenses available to it that are different from, or additional to, or inconsistent with, those available to Contractor, then Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification Section, then Owner, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Contractor to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Contractor, at the rate of interest provided to be paid on judgments by the law of the jurisdiction to which the interpretation of the Contract is subject. The obligations of Contractor under this Section shall survive the expiration of the Contract and specifically shall survive the limitations contained in Section 15.1 hereof.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 SUBSTITUTIONS OF PRODUCTS AND SYSTEMS, "OR EQUAL" BRANDS

§ 3.19.1 The materials, products and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products or systems provided that it meet the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

§ 3.19.2 If, after award of contract, the Contractor or one of his Subcontractors or Suppliers determines that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate modification.

§ 3.20 RECORD DRAWINGS

§ 3.20.1 At the completion of the project, the Contractor shall submit one complete set of blue lines showing all changes and routing of utilities made during construction, excluding Architect made CAD changes, to the Architect. Drafting

shall be legible to the Architect's satisfaction. The Contractor shall pay for the cost of the required recording/drafting. The record set shall be kept up to date on a daily basis and the Architect shall review its status at the project meetings. The Architect shall furnish the Contractor with a blueline set at contract award which shall have all Addenda incorporated. The Owner will pay for the printing of the blueline set. The Architect will incorporate any record information into the construction (CAD) documents and provide the Owner with an electronic copy of the record information on the Construction documents that have all bid and construction changes incorporated. The cost for incorporating the record information into the CD will be paid for by the Owner. The Architect will transmit the electronic CD to the Owner with a copy of the transmittal to the Contractor's construction manager.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect, as representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will be required to make on-site inspections as necessary to keep the Owner informed of the progress of the Work and as necessary to guard the Owner against defects and deficiencies in the Work. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect shall not have control over or charge of and shall not be responsible for safety precautions and programs in connection with the Work. Architect shall be responsible for promptly notifying Contractor of the failure of Contractor, Subcontractors or any other persons performing any of the Work, in failing to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs, but only to the extent Architect becomes aware of, or should, exercising due professional diligence, be aware of, same. Architect shall also promptly notify Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or reject, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 DELETED.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site or to otherwise furnish labor, material or other services with respect to a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or to otherwise furnish labor, material or other services with respect to a portion of the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, but no later than 10 days prior to the submittal date for the Contractor's first Application for Payment shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. Failure of the Contractor to submit the subject names in a timely manner may delay processing of the Contractor's Application for Payment.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 All subcontracts shall be in written form and shall specifically provide that Owner is an intended third-party beneficiary of the subcontract.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.5 Contractor shall promptly notify Owner and Architect of any material defaults by any Sub-contractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Sub-contractor or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 DELETED.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may only be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents and is subject to the approval of the Owner.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect and is subject to the approval of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited, to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.2.3 Contractor shall keep and periodically submit to Owner copies of a log for all Change Orders.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Contractor shall keep and periodically submit to Owner copies of a log for all Construction Change Directives and a log for all requests for information.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation in writing between the Owner and the Contractor;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon in writing between the Owner and the Contractor;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, in each case in writing between the Owner and the Contractor; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed a total maximum of **fifteen percent (15%)** for all Work, and further limited to as follows, not to exceed five percent (5%) for Work done by Contractor's employees and **ten percent (10%)** of such Work's actual cost to be apportioned between any and all Subcontractors and Sub-subcontractor. "Actual cost" does not include any item that could be deemed to be a general conditions cost or overhead, such as, but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority after having obtained Owner's approval to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.1.1 The Work shall be fully completed within the time limit and/or date stated in the Contract between Owner and Contractor.

§ 8.1.1.2 Liquidated Damages: If the Contractor should fail to fully complete the Work within the stated time (subject however to extension of time duly granted in the manner and for the causes specified in the General Conditions), Contractor shall be charged by and shall pay to Owner, as liquidated damages, the sum specified in Article 3 of the AIA document A101 – 2017 by and between Owner and Contractor to which this document is attached as Exhibit A per calendar day that the Work remains incomplete beyond the time fixed for completion. Contractor hereby agrees that from the nature of the project it would be impracticable and extremely difficult to fix the actual damage that would or will be suffered in the event that Contractor should fail to fully complete the Work by the time limit or date stated and the amount of the liquidated damages are fair and reasonable. The parties agree that the liquidated damages are a reasonable forecast of just compensation for the harm done to Owner that would be caused by Contractor's failure to timely complete the Work. Contractor agrees that the amount of liquidated damages due Owner may be deducted by Owner from any monies that might otherwise be or become payable to Contractor.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes

beyond the Contractor's control; or by delay authorized by Owner pending mediation, or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or that are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contractor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. Changes in the Work, regardless of the extent or number of such Changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.1 Commitment of Current Revenues Only. As reflected in Section 4.5 of the modified AIA document A101 – 2017 Edition by and between Owner and Contractor to which this document is attached as Exhibit A, in the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as Architect may direct or as required by Owner. This schedule, when approved by Architect and Owner, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment. All items with entered values will be transferred by Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by Architect and approved by Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Any

allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an office of Contractor to the effect that:

There are no known mechanics', materialman's or laborers' liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialman's or laborers' lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the Work; and waivers and releases from all Subcontractors, laborers, and material men for Work done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to Architect together with Contractor's waiver and release of liens and claims at the time of submission of the Application for Payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing by the Owner and Surety. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and

inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified and that the aggregate amount theretofore paid to Contractor plus any applicable retention does not exceed the value of the completed portion of the Work. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion within the Contract Time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 DELETED.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Contract, including but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7 pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner sole discretion, elect either to (i) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (ii) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of issuance of the certificate of final payment by Architect unless otherwise provided in the Certificate of Substantial Completion. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner and/or Owner's employees and if applicable, the public, could occupy the building on that date and the completing of the Work by Contractor would not materially interfere or hamper Owner's or Owner's employees and if applicable, the public, (or those claiming by, through, or under Owner) from normal County operations. As a further condition of Substantial Completion acceptance, Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If Contractor requests a Substantial Completion review, and Architect, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then Contractor shall pay the Architect's fees for any additional Substantial Completion reviews.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

§ 9.8.7 After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contractor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any portion of the Work authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing after Substantial Completion.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons

or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 DELETED.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 DELETED.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES

§ 11.1.5.1 Contractor shall carry and keep in full force for the duration of the project the following Coverage.

Coverage	Minimum Amounts and Limits
Worker's Compensation	
Employer's Liability:	Statutory Limits
Bodily Injury by Accident	\$500,000.00/each accident
Bodily Injury by Disease	\$500,000.00/each employee
Bodily Injury by Disease	\$500,000.00/Policy Limit
Commercial General Liability	
Bodily Injury/Property Damage	\$1,000,000.00 per occurrence \$2,000,000.00 aggregate

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

Comprehensive Automobile Liability \$1,000,000.00 Combined Single
Limit per Occurrence

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see Section 3.18).

§11.1.5.2 All policies shall contain special endorsements to include:

1. The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);
2. Waiver of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.
3. A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.
4. Contain cross-liability and severability of interest endorsements;
5. state that this insurance is primary insurance in regard to any other insurance carried by an Indemnified Party (see Section 3.18);

.6 the following coverage:

- a. Premises/Operations;
- b. Independent Contractors;
- c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
- d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed);
- e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;
- f. Personal Injury Liability with the contractual exclusions removed;
- g. Cross Liability Endorsement.

§11.1.5.6 Umbrella Excess Liability Insurance

Bodily Injury and Property Damage	\$2,000,000.00 per occurrence \$2,000,000.00 aggregate
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This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

§11.1.6 Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

§11.1.7 In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

§11.1.8 Workers' Compensation Insurance Coverage.

§11.1.8.1 Definitions:

- .1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- .2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- .3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§11.1.8.2 The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

§11.1.8.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

§11.1.8.4 If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

§11.1.8.5 The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- .1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- .2 no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

§11.1.8.6 The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

§11.1.8.7 The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

§11.1.8.8 The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§11.1.8.9 The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- .1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- .2 provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- .3 provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- .4 obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- .5 retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- .6 notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- .7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

§11.1.8.10 By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.1.8.11 The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.2.1 By signing the Contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that coverage will be based on proper reporting or classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.2.2 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Article 11.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Contractor shall obtain a builder's risk "all-risk" or equivalent policy in the amount of the initial Contract Sum (or if applicable Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The policy must also name its subcontractors and the Owner as additional insured, as their respective interests may appear. Coverage shall include material stored on-site and in transit. Such insurance will be with a company or companies lawfully authorized to do business in Texas. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed \$2,500.00 for a Contract Sum of less than \$4 million. For a Contract Sum of \$4 million or more, the deductible shall not exceed \$5,000.00.

§ 11.3.1.1.2 The Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their Subcontractors, Sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as a fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.1.1.3 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to their Sub-subcontractors in similar manner. If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds.

§ 11.3.1.2 DELETED.

§ 11.3.1.3 DELETED.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use shall not affect the validity or coverage of property insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.

§ 11.3.3 LOSS OF USE INSURANCE DELETED.

§ 11.3.4 DELETED.

§ 11.3.5 DELETED.

§ 11.3.6 DELETED.

§ 11.3.7 WAIVERS OF SUBROGATION

Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents and employees, and (2) the Architect, Architect's consultants, separate contractors if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Article 11 or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate

written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 DELETED.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the faithful performance of the Contract and also a one hundred percent (100%) Payment Bond, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with the Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Subchapter A of Chapter 3503 of the Texas Insurance Code.

§11.4.1.1 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting. All Bonds will be reviewed by the Architect for compliance with the Contract Documents prior to the execution of the Contract. In the event that Architect has any questions concerning the sufficiency of the bonds, Architect shall refer the bonds to Owner or Owner's representative for decision.

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

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be on or after the date of execution of the Contract but prior to the date of the notice to proceed. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs

and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect as incomplete, defective, or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work (unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This corrective period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. Corrective Work shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective Work or one (1) year after the Date of Substantial Completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from Owner. This obligation under this Section 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 Just before the termination of the various guarantee periods, Contractor shall accompany Owner's agent and Architect on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the Work without interruption until accepted by Owner and Architect, even though such prosecution should extend beyond the limit of the guarantee period.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor's correction or removal of Work that is defective or otherwise not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents or under law or in equity. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is defective or otherwise not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice or if delivered by facsimile to the offices of the person or corporation for which it was intended. Facsimiles received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. Architect or Owner may at any time request and receive from Contractor satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

§ 13.5.4 Required certificates of testing, inspection or approval shall, be secured by the Contractor and delivered to the Owner, unless such testing or inspection services are arranged by Owner.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

An overdue payment bears interest at the legal rate established by the Texas Government Code, currently in Section 2251.025, or in the event no rate is so established, at the rate of one percent (1%) each month. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives an invoice from Contractor.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

§ 13.8.1 The Contractor shall maintain policies of employment as follows: "The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies."

§13.8.1.1 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT

§13.9.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10 by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the construction company.

§13.9.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

§13.9.3 Final payment shall not be made until this letter of certification has been received.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency that requires all Work to be

(Paragraphs deleted)
stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed in accordance with the Contract Documents.

§ 14.1.4 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Sections 14.1.1 and 14.1.2.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials and equipment;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or
- .6 otherwise does not fully comply with the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs that would have been payable to Contractor to complete the Work except for

Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by Owner and confirmed by Architect.

§14.2.5 In addition to Owner's right to remove Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of Work or any subcontract or all remaining Work for any reason whatsoever by giving seven (7) days' prior written notice to Contractor specifying the part of Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of Work not terminated. If any part of Work or subcontract is so terminated, Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

§14.2.6 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Section 14.2.5.

§14.2.7 Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.2.5.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, without any overhead or profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right adjustment, or interpretation of the Contract Terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be by written notice.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause or causes of the claim, and if any extension of time is requested, the number of days of extension requested.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be value unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Architect determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraph deleted)

Contractor shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor.

§ 15.1.7 In the event the Contractor fails to achieve substantial completion by the date indicated in the Contract, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount as stated in Section 3.1.1 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor to which this document is attached as Exhibit A per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult and in no sense be considered a penalty.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim in whole or in part, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation.

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 DELETED.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract may be subject to mediation as a condition precedent to litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

§ 15.3.3 The parties shall share the mediator's fee. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

The parties expressly agree that disputes or claims arising under the Contract Documents shall not be subject to arbitration unless mutually agreed by the parties in writing.

OWNER:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

Date

CONTRACTOR:

[_____]

By: _____
Printed Name: _____
Title: _____

Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)



**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: *Adelfino*

SUPERVISOR: *Cynthia Medrano-Richards*

Approved for presentation to the Board of Education:

J. Adansky

Description	A Original Budget	B Revised Budget 07/31/2020	C Budget Amendments Under Consideration		E Revised Budget 08/31/2020
			Programmatic or Policy Changes	D Reclassifications	
Unaudited Fund Balance	86,855,466	86,855,466			86,855,466
Revenues:					
Local:					
Property Taxes	79,823,682	79,823,682			79,823,682
Interest Income	1,559,000	1,559,000			1,559,000
Other Local Income	2,827,299	2,827,299			2,827,299
State:	137,774,797	137,774,797			137,774,797
Federal:	21,131,995	21,131,995			21,131,995
Other Sources:	0	910,055	3,369,740		4,279,795
Total Revenues	243,116,773	244,026,828	3,369,740	0	247,396,568
Expenditures:					
11 Instruction	125,902,178	126,269,950	3,386,003	9,779	129,665,732
12 Inst. Res. & Media Services	3,591,042	3,591,042		16,276	3,607,318
13 Curriculum Dev. & Inst. Staff Dev.	4,566,016	4,664,324		114,801	4,779,125
21 Inst. Leadership	3,424,579	3,272,076		(32,486)	3,239,590
23 School Leadership	13,398,767	13,699,344	53,542	20,002	13,772,888
31 Guid., Counseling & Eval. Ser.	10,033,333	10,079,062		(72,461)	10,006,601
32 Social Work Services	1,864,993	1,879,013			1,879,013
33 Health Services	3,031,453	3,083,099		(2,100)	3,080,999
34 Student (Pupil) Trans.	4,007,329	4,026,730	201,913		4,228,643
35 Food Services	17,566,135	17,566,135			17,566,135
36 Curricular/Extracurricular Act.	9,996,499	10,080,519	960	(87,416)	9,994,063
41 General Administration	7,895,268	8,014,818	35,818		8,050,636
51 Plant Maint. & Operations	19,817,409	19,940,637	553,897	4,970	20,499,504
52 Security and Monitoring Serv.	4,387,069	4,387,069	341,825	360	4,729,254
53 Data Processing Services	4,703,026	4,902,220	616,733	21,375	5,540,328
61 Community Services	35,975	35,975		6,000	41,975
71 Debt Service	7,073,589	7,073,589			7,073,589
81 Fac. Acquisition & Const.	5,000	0	605,944	900	606,844
95 Pmt. to Juv. Justice Alt. Ed. Prg.	40,000	40,000			40,000
99 Other Intergovernmental Charges	891,975	891,975			891,975
Other Uses	85,330	85,330			85,330
Total Expenditures	242,316,965	243,582,907	5,796,635	0	249,379,542
Preliminary Ending Fund Balance	87,655,274	87,299,387	(2,426,895)	0	84,872,492

GENERAL FUND
Programmatic or Policy Changes

REVENUES:

Other Sources

	- Technology Refresh Lease Phase 4	\$ 3,369,740		3,369,740
			Grand Total	\$ 3,369,740

EXPENDITURES:

Function 11	- Technology Refresh Lease Phase 4	\$ 3,369,740		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Science Lab Supplies at Rowe High School	10,606		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - TRE Projects - Science Labs	<u>5,657</u>		3,386,003
Function 23	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Desk for Perez Elementary	\$ 2,402		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Cash Management System	<u>51,140</u>		53,542
Function 34	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Regular Buses for Transportation	\$ 201,913		201,913
Function 36	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Cash Management System	\$ 960		960
Function 41	- Transfer from Assigned Fund Balance for Fund 199 General Fund - HR/Retirement and Award Ceremony	\$ 5,878		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Procurement Implementation for Purchasing Department	2,500		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Trailer Repairs for Community Information	10,000		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Cash Management System	<u>17,440</u>		35,818
Function 51	- Transfer from Assigned Fund Balance for Fund 199 General Fund - COVID Related Supplies - Hand Sanitizer	\$ 230,000		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - One Time Projects for FMO	308,425		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Staff Development Portable	6,755		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - TRE Projects - Fencing	<u>8,717</u>		553,897
Function 52	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Vehicle Supplies for Police Department	\$ 642		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - One Time Projects for FMO	163,617		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - TRE Projects - Security Cameras	173,814		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Technology Action Plan	<u>3,752</u>		341,825
Function 53	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Technology Action Plan	\$ 616,358		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Student Record Conversion Software for Department of Student Operations	<u>375</u>		616,733
Function 81	- Transfer from Assigned Fund Balance for Fund 199 General Fund - One Time Projects for FMO	\$ 40,858		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Warehouse Exhaust Fan	10,000		
	- Transfer from Assigned Fund Balance for Fund 199 General Fund - TRE Projects - Security Cameras	39,460		
	- Transfer from Committed Fund Balance for Fund 199 General Fund - Hail Damage Roof Repairs at Achieve Early College High School at Lincoln and Crockett Administration Annex	<u>515,626</u>		605,944
			Grand Total	\$ 5,796,635

CAPITAL PROJECTS

Description	A	B		C	D
	Original Budget	Budget Amendments Under Consideration		Revised Budget 08/31/2020	
		Programmatic or Policy Changes	Reclassifications		
Unaudited Fund Balance	25,797,128				25,797,128
Revenues:					
Local Interest Income					
Other Sources					
Total Revenues	0	0	0	0	0
Expenditures:					
51 Plant Maint. & Operations	761,000				761,000
81 Fac. Acquisition & Const.	24,730,302	305,826			25,036,128
Total Expenditures	25,491,302	305,826	0	0	25,797,128
Preliminary Ending Fund Balance	305,826	(305,826)	0	0	0

CAPITAL PROJECTS FUND
Programmatic or Policy Changes

REVENUES:

Grand Total \$ -

EXPENDITURES:

Function 81	- Carry Forward Purchase Order from 2019-2020 for Fund 619 MISD MTN 2020 - Culinary Arts	\$ 20,726	
	- Carry Forward Purchase Orders from 2019-2020 for Fund 619 MISD MTN 2020 - Press Box	202,800	
	- Carry Forward Purchase Order from 2019-2020 for Fund 698 MISD Capital Projects - AG Farm	<u>82,300</u>	
			305,826

Grand Total \$ 305,826

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: *Adelfino*

SUPERVISOR: *Cynthia Medrano-Richards*

Approved for presentation to the Board of Education:

J. Adansky

RESOLUTION

SETTING THE 2020 TAX RATE OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT FOR THE YEAR BEGINNING ON JANUARY 1, 2020 AND ENDING DECEMBER 31, 2020

WHEREAS, the valuation of taxable property within the boundaries of the MCALLEN INDEPENDENT SCHOOL DISTRICT has heretofore been determined; and

WHEREAS, a Budget for said District has been prepared and adopted on June 22, 2020 by the Board of Trustees; and

WHEREAS, it is now desired by the Board of Trustees of the MCALLEN INDEPENDENT SCHOOL DISTRICT TO SET THE TAX RATE FOR THE COMING YEAR:

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

1. That the following rates on the \$100.00 valuation be adopted and levied for the year beginning January 1, 2020, and ending December 31, 2020:
 - (a) An ad valorem tax of and at the rate of \$1.0450 on the \$100.00 valuation, estimated in lawful currency of the United States, be allocated for the maintenance and operations of the McAllen Independent School District; and
 - (b) An ad valorem tax of and at the rate of \$0.0936 on the \$100.00 valuation, estimated in lawful currency of the United States, be allocated for the Debt Service Funds of the McAllen Independent School District.
 - (c) In adopting such rates the Board finds that:

THIS TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE. THE TAX RATE WILL BE EFFECTIVELY RAISED BY 0.56 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY -\$14.

2. That a total ad valorem tax rate of \$1.1386 per \$100.00 valuation be hereby adopted.
3. That the tax assessor for the unit be notified of the tax rate adopted.

EXECUTED ON THIS 14 DAY OF September, 2020.

MCALLEN INDEPENDENT SCHOOL DISTRICT

BY: _____
Mr. Conrado Alvarado, President
Board of Trustees
McAllen Independent School District

ATTEST:

Mr. Tony Forina, Secretary
Board of Trustees
McAllen Independent School District

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: 

SUPERVISOR: 

Approved for presentation to the Board of Education:


Superintendent of Schools

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: *Adelfino*

SUPERVISOR: *Cynthia Medrano-Richards*

Approved for presentation to the Board of Education:

J. Adansky

AN ORDER BY THE BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT AUTHORIZING THE ISSUANCE OF “MCALLEN INDEPENDENT SCHOOL DISTRICT UNLIMITED TAX REFUNDING BONDS, SERIES 2020”; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF THE BONDS; PRESCRIBING THE FORM, TERMS, CONDITIONS, AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, AND DELIVERY OF THE BONDS, INCLUDING THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT PERTAINING THERETO; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT, AN ESCROW AGREEMENT, AND A PURCHASE CONTRACT; COMPLYING WITH THE LETTER OF REPRESENTATIONS ON FILE WITH THE DEPOSITORY TRUST COMPANY; DELEGATING THE AUTHORITY TO CERTAIN MEMBERS OF THE BOARD OF TRUSTEES AND DISTRICT STAFF TO EXECUTE CERTAIN DOCUMENTS RELATING TO THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION OF ANY NECESSARY ENGAGEMENT AGREEMENT WITH THE DISTRICT’S FINANCIAL ADVISORS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Board of Trustees (the *Board* or the *Board of Trustees*) of the McAllen Independent School District (the *District* or the *Issuer*) has heretofore issued, sold, and delivered, and there are currently outstanding obligations, payable from ad valorem taxes, in the aggregate original principal amount of \$8,715,000, being the obligations disclosed on Schedule I attached hereto and incorporated by reference for all purposes to this order (the *Refunded Obligations*); and

WHEREAS, pursuant to the provisions of Chapter 1207, as amended, Texas Government Code (the *Act*), the Board is authorized to issue refunding bonds and deposit the proceeds of sale directly with any designated escrow agent for the Refunded Obligations, and such deposit, when made in accordance with the Act, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, when firm banking arrangements have been made for the payment of principal and interest to the stated maturity or redemption date of the Refunded Obligations, then the Refunded Obligations shall no longer be regarded as outstanding except for the purpose of receiving payment from the funds provided for such purpose and may not be included in or considered to be an indebtedness of the District for the purpose of a limitation on outstanding indebtedness or taxation or for any other purpose; and

WHEREAS, the Act permits that the deposit of the proceeds from the sale of the refunding bonds be deposited directly with any designated escrow agent for the Refunded Obligations which is not the depository bank of the District; and

WHEREAS, The Bank of New York Mellon Trust Company, N.A., Dallas, Texas currently serves as the paying agent/registrar for the Refunded Obligations; and

WHEREAS, The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, which is not a depository bank of the District is hereby appointed as the Escrow Agent (hereinafter defined) and Paying Agent/Registrar (hereinafter defined) for the refunding bonds; and

WHEREAS, the Board hereby finds and determines that the Refunded Obligations are scheduled to mature, or are subject to being redeemed, not more than twenty (20) years from the date of the refunding bonds herein authorized to refinance the District's debt service and such refunding will result in a gross savings of \$_____ and a net present value savings of \$_____ (_____%), including the District's cash contribution of \$_____; and

WHEREAS, the Board hereby finds and determines, pursuant to the authority provided by the Act to delegate to the Authorized Officials (defined herein) the authority to execute an "approval certificate" (a form of which is attached hereto as Schedule II) to approve the final terms of the refunding bonds issued hereunder; and

WHEREAS, the Board hereby finds and determines that the issuance of the refunding bonds is in the best interests of the residents of the District, now, therefore,

BE IT ORDERED BY THE BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT THAT:

SECTION 1: Authorization - Designation - Principal Amount - Purpose – Bond Date. Unlimited tax refunding bonds of the District shall be and are hereby authorized to be issued in the aggregate original principal amount of _____ AND NO/100 DOLLARS (\$_____) to be designated and bear the title "MCALLEN INDEPENDENT SCHOOL DISTRICT UNLIMITED TAX REFUNDING BONDS, SERIES 2020" (the *Bonds*), for the purposes of providing funds for (i) the discharge and final payment of certain obligations of the District (identified in the preamble hereof and referred to as the *Refunded Obligations*) and (ii) paying the costs and expenses of issuance of the Bonds, pursuant to the authority conferred by and in conformity with the laws of the State of Texas, including the Act. The Bonds shall be dated October 1, 2020 (the *Bond Date*) and interest shall accrue as provided in Section 2 hereof.

As authorized by the Act, the President, Board of Trustees, the Vice President, Board of Trustees, the Secretary, Board of Trustees, the Superintendent of Schools, the Assistant Superintendent for Business Operations, and the Chief Financial Officer (each of the foregoing, individually, an *Authorized Official*) are hereby authorized, appointed, and designated as the officials of the District authorized to individually act on behalf of the District in selling and delivering the Bonds authorized herein and carrying out the procedures specified in this Order, the maturity and interest payment dates, the structuring of the Bonds as current interest or capital appreciation bonds, approval of the aggregate principal amount of each maturity of the Bonds, the redemption provisions therefor, the Bond Date therefor, the rate of interest to be borne on the principal amount of each such maturity, selection of the Purchasers (defined herein), and selection of the paying agent/registrar and escrow agent for the Bonds. Each Authorized Official, acting for

and on behalf of the District, is authorized to execute the Approval Certificate in the form attached hereto as Schedule II. The Bonds shall be issued in an original aggregate principal amount not to exceed \$8,715,000; the maximum maturity of the Bonds will be February 15, 2030; the true interest rate (federal arbitrage yield) shall not exceed a rate greater than 4.00% per annum; the refunding must produce present value savings, determined on a comparative basis to the prior debt service on the Refunded Obligations, of at least 4.00% (taking into account any District cash contribution and applicable costs of issuance). The Authorized Official can determine to sell the Bonds pursuant to a private placement, negotiated sale, or competitive sale based upon the advice of the District’s financial advisors. The execution of the Approval Certificate shall evidence the sale date of the Bonds by the District to the Purchasers in accordance with the provisions of the Act. Upon execution of the Approval Certificate, Bond Counsel is authorized to complete this Order to reflect such final terms applicable to the Bonds.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates. The Bonds shall be issued as fully registered obligations, without coupons, and shall be issued in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity), shall be lettered “R” and numbered consecutively from One (1) upward and principal shall become due and payable on February 15 in each of the years as described below and in amounts and bear interest at the rates per annum in accordance with the following schedule:

<u>Years of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		

The Bonds shall bear interest on the unpaid principal amounts from the Closing Date (anticipated to occur on or about October 28, 2020) or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for to Stated Maturity or prior redemption, while Outstanding, at the rates per annum shown in the above schedule (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Bonds shall be payable on February 15 and August 15 in each year (each, an *Interest Payment Date*), commencing February 15, 2021.

SECTION 3: Payment of Bonds - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds due and payable by reason of Stated Maturity, redemption, or otherwise shall be payable, without exchange or collection charges to the registered owners of the Bonds (the *Holder* or *Holder*s), appearing on the Security Register (hereinafter defined) maintained by the Paying Agent/Registrar (hereinafter defined), in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the *Paying Agent/Registrar*) to serve as the initial Paying Agent/Registrar for the Bonds is hereby approved and confirmed, and the District agrees and covenants to cause to be kept and maintained at the corporate trust office of the Paying Agent/Registrar books and records (the *Security Register*) for the registration, payment, and transfer of the Bonds, all as provided herein, in accordance with the terms and provisions of a Paying Agent/Registrar Agreement, attached hereto, in substantially final form, as Exhibit A, and such reasonable rules and regulations as the Paying Agent/Registrar and the District may prescribe. The District covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be (i) a national or state banking institution, (ii) an association or a corporation organized and doing business under the laws of the United States or any state, authorized under such laws to exercise trust powers. The Paying Agent/Registrar shall be subject to supervision or examination by federal or state authority and shall be authorized by law to serve as a Paying Agent/Registrar.

The District reserves the right to appoint a successor Paying Agent/Registrar upon providing the previous Paying Agent/Registrar with a certified copy of a resolution or order terminating such agency. Additionally, the District agrees to promptly cause a written notice of this substitution to be sent to each Holder by United States mail, first-class postage prepaid, which notice shall also give the address of the corporate trust office of the successor Paying Agent/Registrar.

Principal of, premium, if any, and interest on the Bonds, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable only to the Holder whose name appears on the Security Register (i) on the Record Date (hereinafter defined), for purposes of paying interest on the Bonds, and (ii) on the date of surrender of the Bonds for purposes of receiving payment of principal thereof and redemption premium thereon, if any, upon redemption of the Bonds or at the Bonds' Stated Maturity. The District and the Paying Agent/Registrar, and any agent of either, shall treat the Holder as the owner of a Bond for purposes of receiving payment and all other purposes whatsoever, and neither the District nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary.

Principal of and premium, if any, on the Bonds shall be payable only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its corporate trust office. Interest on the Bonds shall be paid to the Holder whose name appears in the Security Register at the close of business on the last business day of the month next preceding each Interest Payment Date for the Bonds (the *Record Date*) and shall be paid (i) by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, by the Paying Agent/Registrar, to the

address of the Holder appearing in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested in writing by the Holder at the Holder’s risk and expense.

If the date for the payment of the principal of, premium, if any, or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a day. The payment on such date shall have the same force and effect as if made on the original date any such payment on the Bonds was due.

In the event of a nonpayment of interest on a Bond on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Holder of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4: Redemption.

A. Mandatory Redemption of Term Bonds. The Bonds stated to mature on February 15, 20__ and February 15, 20__ are referred to herein as the “Term Bonds”. The Term Bonds are subject to mandatory sinking fund redemption prior to their stated maturities from money required to be deposited in the Bond Fund for such purpose and shall be redeemed in part, by lot or other customary method, at the principal amount thereof plus accrued interest to the date of redemption in the following principal amounts on February 15 in each of the years as set forth below:

Term Bonds Stated to Mature <u>on February 15, 20</u>		Term Bonds Stated to Mature <u>on February 15, 20</u>	
<u>Year</u>	<u>Principal Amount (\$)</u>	<u>Year</u>	<u>Principal Amount (\$)</u>

*Payable at Stated
Maturity.

The principal amount of a Term Bond required to be redeemed pursuant to the operation of such mandatory redemption provisions shall be reduced, at the option of the District, by the principal amount of any Term Bonds of such Stated Maturity which, at least fifty (50) days prior to the mandatory redemption date (1) shall have been defeased or acquired by the District and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchased and

canceled by the Paying Agent/Registrar at the request of the District with money in the Bond Fund, or (3) shall have been redeemed pursuant to the redemption provisions set forth below and not theretofore credited against a mandatory redemption requirement.

B. Exercise of Redemption Option. At least forty-five (45) days prior to a date set for the redemption of the Bonds (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the District shall notify the Paying Agent/Registrar of its decision to exercise the right to redeem the Bonds, the principal amount of each Stated Maturity to be redeemed, and the date set for the redemption thereof. The decision of the District to exercise the right to redeem the Bonds shall be entered in the minutes of the governing body of the District.

C. Selection of Bonds for Redemption. If less than all Outstanding Bonds of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall select at random and by lot the Bonds to be redeemed, provided that if less than the entire principal amount of a Bond is to be redeemed, the Paying Agent/Registrar shall treat such Bond then subject to redemption as representing the number of Bonds Outstanding which is obtained by dividing the principal amount of such Bond by \$5,000.

D. Notice of Redemption. Not less than thirty (30) days prior to the redemption date for the Bonds, the Paying Agent/Registrar shall cause a notice of redemption to be sent by United States mail, first-class postage prepaid, in the name of the District and at the District's expense, by the Paying Agent/Registrar to each Holder of a Bond to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the time such notice of redemption is mailed, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder. This notice may also be published once in a financial publication, journal, or reporter of general circulation among securities dealers in the City of New York, New York (including, but not limited to, *The Bond Buyer* and *The Wall Street Journal*), or in the State of Texas (including, but not limited to, *The Texas Bond Reporter*).

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Bonds, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount thereof to be redeemed, shall be made at the corporate trust office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder.

If a Bond is subject by its terms to redemption and has been called for redemption and notice of redemption thereof has been duly given as hereinabove provided, such Bond (or the principal amount thereof to be redeemed) so called for redemption shall become due and payable, and if money sufficient for the payment of such Bonds (or of the principal amount thereof to be redeemed) at the then applicable redemption price is held for the purpose of such payment by the Paying Agent/Registrar, then on the redemption date designated in such notice, interest on the Bond (or the principal amount thereof to be redeemed) called for redemption shall cease to accrue and such Bonds shall not be deemed to be Outstanding.

E. Transfer/Exchange of Bonds. Neither the District nor the Paying Agent/Registrar shall be required to transfer or exchange any Bonds called for redemption, in whole or in part, during a period beginning forty-five (45) days prior to the redemption date; provided, however such limitation shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond which is subject to partial redemption.

SECTION 5: Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of every owner of the Bonds or, if appropriate, the nominee thereof. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of like kind or of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond (other than the Initial Bond authorized in Section 7 hereof) at the corporate trust office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds executed on behalf of, and furnished by, the District of authorized denomination and having the same Stated Maturity and of a like aggregate principal amount and interest rate as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest, and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the corporate trust office of the Paying Agent/Registrar. Whenever any Bonds are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds executed on behalf of, and furnished by, the District to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the corporate trust office of the Paying Agent/Registrar, or sent by United States registered mail to the Holder at his request, risk, and expense, and upon the delivery thereof, the same shall be the valid obligations of the District, evidencing the same obligation to pay, and entitled to the same benefits under this Order, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be Predecessor Bonds, evidencing all or a portion, as the case may be, of the same debt evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term Predecessor Bonds shall include any Bond registered and delivered pursuant to Section 15 of this Order in lieu of a mutilated, lost, destroyed, or stolen Bond which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

SECTION 6: Execution - Registration. The Bonds shall be executed on behalf of the District by the President or Vice President of the Board under its seal reproduced or impressed thereon and attested by the Secretary of the Board. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the District on the Bond Date shall be deemed to be duly executed on behalf of the District, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the Purchasers and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Chapter 1201, as amended, Texas Government Code.

No Bond shall be entitled to any right or benefit under this Order, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 8C, executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent by manual signature, or a certificate of registration substantially in the form provided in Section 8D, executed by the Paying Agent/Registrar by manual signature. Either of these certificates upon any Bond shall be conclusive evidence, and the only evidence required, that such Bond has been duly certified or registered and delivered.

SECTION 7: Initial Bond. The Bonds herein authorized shall be initially issued as a single fully registered Bond in the aggregate principal amount of \$_____ with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1 (the *Initial Bond*), and the Initial Bond shall be registered in the name of the Purchasers or the designee thereof, as further described in Section 16. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the Purchasers. Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the Purchasers, or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of like kind and of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates, and shall be lettered "R" and numbered consecutively from one (1) upward for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the Purchasers, or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 8: Forms.

A. Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the Assignment to be printed on each of the Bonds shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Order and may have such letters, numbers, or other marks of identification (including the identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including the guarantee of the Permanent School Fund, insurance legends in the event the Bonds, or any Stated Maturities thereof, are insured, and any reproduction of an opinion of Bond Counsel (hereinafter referenced)) thereon as may, consistent herewith, be established by the District or determined by the officers executing such Bonds as evidenced by their execution

thereof. Any portion of the text of any Bond may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds shall be printed, lithographed, or engraved or produced in any other similar manner, all as determined by the officers executing the Bonds as evidenced by their execution thereof, but the Initial Bond submitted to the Attorney General of Texas may be typewritten or photocopied or otherwise reproduced.

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B. Form of Definitive Bonds.

REGISTERED
NO. R-____

REGISTERED PRINCIPAL
AMOUNT
\$_____

United States of America
State of Texas
County of Hidalgo
MCALLEN INDEPENDENT SCHOOL DISTRICT
UNLIMITED TAX REFUNDING BONDS,
SERIES 2020

Bond Date: October 1, 2020 Interest Rate: Stated Maturity: CUSIP No.:

REGISTERED OWNER:_____

PRINCIPAL AMOUNT:_____ AND NO/100 DOLLARS

The McAllen Independent School District (the *District*), a body corporate and political subdivision in the County of Hidalgo, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above (the *Holder*), or the registered assigns thereof, the Principal Amount specified above (or so much as shall not have been paid upon prior redemption) on the Stated Maturity date specified above and to pay interest on the unpaid principal amount hereof from the Closing Date (anticipated to occur on or about October 28, 2020) or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, to the earlier of redemption or to Stated Maturity, at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year (each, an *Interest Payment Date*), commencing February 15, 2021.

Principal and premium, if any, of this Bond shall be payable to the Holder hereof, upon presentation and surrender, at the corporate trust office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest shall be payable to the Holder of this Bond (or one or more Predecessor Bonds, as defined in the Order hereinafter referenced) whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last business day of the month next preceding each Interest Payment Date. All payments of principal of, premium, if any, and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or before the appropriate date of payment, by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder hereof.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$_____ (the *Bonds*) pursuant to an order adopted by the Board of Trustees of the District (the *Order*) for the purpose of providing funds for (i) the discharge and final payment of the Refunded Obligations, and (ii) paying the costs and expenses of issuing the Bonds, pursuant to the authority conferred by and in strict conformity with the laws of the State of Texas, including the Act.

The Bonds are payable from the proceeds of an ad valorem tax levied, without limit as to rate or amount, upon all taxable property within the District.

The Bonds stated to mature on February 15, 20__ and February 15, 20__ are referred to herein as the “Term Bonds”. The Term Bonds are subject to mandatory sinking fund redemption prior to their Stated Maturities from money required to be deposited in the Bond Fund for such purpose and shall be redeemed in part, by lot or other customary method, at the principal amount thereof plus accrued interest to the date of redemption in the following principal amounts on February 15 in each of the years as set forth below:

Term Bonds Stated to Mature on <u>February 15, 20</u>		Term Bonds Stated to Mature on <u>February 15, 20</u>	
<u>Year</u>	<u>Principal Amount (\$)</u>	<u>Year</u>	<u>Principal Amount (\$)</u>

*Payable at Stated
Maturity.

The principal amount of a Term Bond required to be redeemed pursuant to the operation of such mandatory redemption provisions shall be reduced, at the option of the District, by the principal amount of any Term Bonds of such Stated Maturity which, at least fifty (50) days prior to the mandatory redemption date (1) shall have been defeased or acquired by the District and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the District with money in the Bond Fund, or (3) shall have been redeemed pursuant to the redemption provisions set forth below and not theretofore credited against a mandatory redemption requirement.

As specified in the Order, the Bonds having Stated Maturities on and after February 15, 20__ shall be subject to redemption prior to Stated Maturity, at the option of the District, on February 15, 20__ or on any date thereafter, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption price of par plus accrued interest to the date of redemption, and upon thirty (30) days prior written notice being given by the Paying Agent/Registrar and subject to the terms and provisions relating thereto contained in the Order. If

this Bond is subject to prior redemption and is of a denomination in excess of \$5,000, portions of the principal sum hereof in installments of \$5,000 or any integral multiple thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, upon the surrender of this Bond to the Paying Agent/Registrar at its corporate trust office there shall be issued to the Holder hereof, without charge therefor, for the then unredeemed balance of the principal sum hereof, a new Bond or Bonds of like Stated Maturity and interest rate in any authorized denominations provided by the Order.

If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if money for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption is held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable thereon from and after the redemption date on the principal amount scheduled to be redeemed. If this Bond is called for redemption, in whole or in part, the Issuer or the Paying Agent/Registrar shall not be required to issue, transfer, or exchange this Bond, within forty-five (45) days from the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond that is redeemed in part.

Reference is hereby made to the Order, a copy of which is on file in the corporate trust office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by his acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Order may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the District and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be redeemed or discharged at or prior to its Stated Maturity and deemed to be no longer Outstanding thereunder; and for the other terms and provisions thereof. Capitalized terms used herein have the meanings assigned to them in the Order.

This Bond, subject to certain limitations contained in the Order, may be transferred only upon its presentation and surrender at the corporate trust office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the Holder hereof, or his duly authorized agent, and such transfer is noted on the Security Register by the Paying Agent/Registrar. When a transfer occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same principal amount that remains Outstanding will be issued to the designated transferee or transferees.

The District and the Paying Agent/Registrar, and any agent of either, shall treat the Holder whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity, or redemption, in whole or in part, and (iii) on any date as the owner for all other purposes, and neither the District nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of

nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the District. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the District is a duly organized and legally existing governmental agency under and by virtue of the laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the District have been properly done, have happened, and have been performed in regular and due time, form and manner as required by the laws of the State of Texas and the Order; that the Bonds do not exceed any Constitutional or statutory limitations; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforesated. In case any provision in this Bond or application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications of this Bond shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Order shall be construed in accordance with and shall be governed by the laws of the State of Texas.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Board of Trustees of the District has caused this Bond to be duly executed under its official seal.

MCALLEN INDEPENDENT SCHOOL
DISTRICT

President, Board of Trustees

ATTEST:

Secretary, Board of Trustees

(DISTRICT SEAL)

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C. *Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER OF §
PUBLIC ACCOUNTS §
THE STATE OF TEXAS § REGISTER NO. _____
§

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

*NOTE TO PRINTER: Do Not Print on Definitive Bonds.

D. *Form of Registration Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued under the provisions of the within-mentioned Order; the Bond or Bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

Registered this date: THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., Dallas, Texas, as
Paying Agent/Registrar

_____ By: _____
Authorized Signature

*NOTE TO PRINTER: Print on Definitive Bonds.

E. Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number): _____

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

Signature guaranteed:

[The remainder of this page intentionally left blank]

F. Form of Initial Bond. The Initial Bond shall be in the form set forth in paragraph B of this Section, except as follows:

Heading and first two paragraphs shall be amended to read as follows:

REGISTERED NO. T-1	REGISTERED PRINCIPAL AMOUNT \$ _____
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United States of America
State of Texas
County of Hidalgo
MCALLEN INDEPENDENT SCHOOL DISTRICT
UNLIMITED TAX REFUNDING BONDS,
SERIES 2020

<u>Bond Date:</u> October 1, 2020	<u>Stated Maturity:</u> As Shown Below	<u>Interest Rate:</u> As Shown Below	<u>CUSIP No.:</u>
--------------------------------------	---	---	-------------------

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ AND NO/100 DOLLARS

The McAllen Independent School District (the *District*), a body corporate and political subdivision in the County of Hidalgo, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above (the *Holder*), or the registered assigns thereof, the Principal Amount specified above on the fifteenth day of February in each of the years and in the Principal Amounts and bearing interest at the per annum rates in accordance with the following schedule:

<u>Years of</u> <u>Stated Maturity</u>	<u>Principal</u> <u>Amounts (\$)</u>	<u>Interest</u> <u>Rates (%)</u>
---	---	-------------------------------------

(Information to be inserted from schedule in Section 2 hereof).

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount hereof from the Closing Date (anticipated to occur on or about October 28, 2020), or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, to Stated Maturity or prior redemption, while Outstanding, at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year (each, an *Interest Payment Date*), commencing February 15, 2021.

Principal and premium, if any, of this Bond shall be payable at its Stated Maturity, while Outstanding, to the Holder hereof, upon its presentation and surrender, at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the *Paying Agent/Registrar*). Interest shall be payable to the Holder of this Bond whose name appears on the

Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last business day of the month next preceding each Interest Payment Date. All payments of principal of, premium, if any, and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder hereof.

[END OF FORMS]

G. Permanent School Fund or Insurance Legends. If bond insurance is obtained by the Purchasers or if the Bonds are guaranteed by the Permanent School Fund of the State of Texas, the Definitive Bonds and the Initial Bond shall bear an appropriate legend as provided by the bond insurer or the Texas Education Agency, as applicable, to appear under the following header (as applicable):

[BOND INSURANCE] or [PERMANENT SCHOOL FUND GUARANTEE]

SECTION 9: Definitions. For all purposes of this Order (as defined below), except as otherwise expressly provided or unless the context otherwise requires: (i) the terms defined in this Section have the meanings assigned to them in this Section, and certain terms used in Sections 20 and 40 of this Order have the meanings assigned to them in Sections 20 and 40 of this Order, and all such terms, include the plural as well as the singular; (ii) all references in this Order to designated “Sections” and other subdivisions are to the designated Sections and other subdivisions of this Order as originally adopted; and (iii) the words “herein”, “hereof”, and “hereunder” and other words of similar import refer to this Order as a whole and not to any particular Section or other subdivision.

(1) The term *Authorized Official* shall mean the President, Board of Trustees, the Vice President, Board of Trustees, the Secretary, Board of Trustees, the Superintendent of Schools, the Assistant Superintendent for Business Operations, and the Chief Financial Officer (or any successor to any of the aforementioned persons serving in the indicated capacity).

(2) The term *Bond Date* shall mean October 1, 2020.

(3) The term *Closing Date* shall mean the date of physical delivery of the Initial Bond in exchange for the payment of the agreed purchase price for the Bonds.

(4) The term *Government Securities* shall mean (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its equivalent; (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer

adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its equivalent; or (iv) any additional securities and obligations hereafter authorized by the laws of the State of Texas as eligible for use to accomplish the discharge of obligations such as the Bonds.

(5) The term *Holder* or *Holder*s shall mean the registered owner or owners of the Bonds appearing on the Security Register maintained by the Paying Agent/Registrar.

(6) The term *Interest Payment Date* shall mean the date interest is payable on the Bonds, being February 15 and August 15 of each year, commencing February 15, 2021, while any of the Bonds remain Outstanding.

(7) The term *Order* shall mean this order adopted by the Board of Trustees on _____, 2020.

(8) The term *Outstanding* shall mean, as of the date of determination, all Bonds issued and delivered under this Order, except:

(a) those Bonds canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(b) those Bonds for which payment has been duly provided by the District in accordance with the provisions of Section 23 of this Order; and

(c) those Bonds that have been mutilated, destroyed, lost, or stolen and replacement Bonds have been registered and delivered in lieu thereof as provided in Section 15 of this Order.

(9) The term *Purchasers* shall mean the initial purchasers of the Bonds named in Section 16 of this Order.

(10) The term *Stated Maturity* shall mean the annual principal payments of the Bonds, payable on February 15 of each year as set forth in Section 2 of this Order.

SECTION 10: Bond Fund - Investments. For the purpose of paying the principal of, premium, if any, and interest on the Bonds, at the earlier of redemption or Stated Maturity, there shall be and is hereby created a special Fund to be designated “MCALLEN INDEPENDENT SCHOOL DISTRICT UNLIMITED TAX REFUNDING BONDS, SERIES 2020 INTEREST AND SINKING FUND” (the *Bond Fund*), which Fund shall be kept and maintained at the District’s depository bank, and money deposited in such Fund shall be used for no other purpose and shall be maintained as provided in Section 23. Each Authorized Official of the District is hereby authorized and directed to make withdrawals from the Bond Fund sufficient to pay the principal of and interest on the Bonds as the same become due and payable or the purchase price thereof, and shall cause to be transferred to the Paying Agent/Registrar from money on deposit in the Bond Fund an amount sufficient to pay the purchase price or the amount of principal, premium, if any, and/or interest stated to mature on the Bonds, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each

interest and principal payment date for the Bonds. To the extent that the District receives an allocation from the Existing Debt Allotment or the Instructional Facilities Allotment established pursuant to Chapter 46, as amended, Texas Education Code or credits a portion of its Basic Allotment established pursuant to Subchapter B of Chapter 42, as amended, Texas Education Code, in order to satisfy Section 45.0031, as amended, Texas Education Code, the District will comply with the provisions of Section 46.009(d) as amended, Texas Education Code, and the aforementioned Section 45.0031 concerning the deposit of these funds into the Bond Fund.

Pending the transfer of funds to the Paying Agent/Registrar, money in any fund created and established pursuant to the provisions of this Order may, at the option of the District, be placed in time deposits, certificates of deposit, guaranteed investment contracts, or similar contractual agreements, as permitted by the provisions of the Public Funds Investment Act, as amended, Chapter 2256, Texas Government Code, secured (to the extent not insured by the Federal Deposit Insurance Corporation) by obligations of the type hereinafter described, or be invested, as authorized by any law, including investments held in book-entry form, in securities including, but not limited to, direct obligations of the United States of America, obligations guaranteed or insured by the United States of America, which, in the opinion of the Attorney General of the United States, are backed by its full faith and credit or represent its general obligations, or invested in indirect obligations of the United States of America, including, but not limited to, evidences of indebtedness issued, insured or guaranteed by such governmental agencies as the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Government National Mortgage Association, Small Business Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from the Bond Fund will be available at the proper time or times. All interest and income derived from deposits and investments in any funds created pursuant to the provisions of this Order shall be credited to, and any losses debited to, such fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds.

SECTION 11: Levy of Taxes - Surplus Bond Proceeds. To provide for the payment of Bonds, there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the District, without legal limit as to rate or amount, sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars valuation of taxable property in the District for the payment of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of, premium, if any, and interest on the Bonds, while any Bond remains Outstanding; full allowance being made for delinquencies and costs of collection. The taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the District and shall be deposited into the Bond Fund; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

Accrued interest, if any, on the Bonds received from the Purchasers, along with any taxes collected after the Closing Date pertaining to the Refunded Obligations, shall be deposited into the Bond Fund. In addition, any surplus proceeds, including investment income therefrom, from the sale of the Bonds (which includes unspent investment income from Bond proceeds) not expended

for authorized purposes shall be deposited into the Bond Fund, and such amounts so deposited shall reduce the sum otherwise required to be deposited in the Bond Fund from ad valorem taxes.

SECTION 12: Security of Funds. All money on deposit in the Fund for which this Order makes provision (except any portion thereof as may be at any time properly invested as provided herein) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and money on deposit in such Fund shall be used only for the purposes permitted by this Order.

SECTION 13: Notices to Holders - Waiver. Wherever this Order provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Holders. Where this Order provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 14: Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the District, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The District may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the District may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the District.

SECTION 15: Mutilated - Destroyed - Lost and Stolen Bonds. If (1) any mutilated Bond is surrendered to the Paying Agent/Registrar, or the District and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Bond, and (2) there is delivered to the District and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the District or the Paying Agent/Registrar that such Bond has been acquired by a bona fide purchaser, the District shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Bond, a new Bond of the same Stated Maturity, interest rate, and of like tenor and principal amount bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Bond has become or is about to become due and payable, the District in its discretion may, instead of issuing a new Bond, pay such Bond.

Upon the issuance of any new Bond, or payment in lieu thereof, under this Section, the District may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses or charges (including attorney's fees and the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the District, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Order equally and ratably with all other Outstanding Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 16: Sale of Bonds – Authorization of Purchase Contract – Official Statement Approval – Use of Proceeds. The Bonds authorized by this Order are hereby sold by the District to _____, _____, _____, as the authorized representative of a group of underwriters at a negotiated sale (the *Purchasers*, having all the rights, benefits, and obligations of a Holder), in accordance with the provisions of a Purchase Contract (the *Purchase Contract*), dated _____, 2020, attached hereto as Exhibit B and incorporated herein by reference as a part of this Order for all purposes. The pricing and terms of the sale of the Bonds are hereby found and determined to be the most advantageous reasonably obtainable by the Issuer. The Initial Bond shall be registered in the name of _____. Any Authorized Official is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Issuer and as the act and deed of this Board, and in regard to the approval and execution of the Purchase Contract, the Board hereby finds, determines and declares that the representations, warranties, and agreements of the Issuer contained in the Purchase Contract are true and correct in all material respects and shall be honored and performed by the Issuer. Delivery of the Bonds to the Purchasers shall occur as soon as practicable after the adoption of this Order, upon payment therefor in accordance with the terms of the Purchase Contract.

Furthermore, the District hereby ratifies, confirms, and approves in all respects (i) the Issuer's prior determination that the Preliminary Official Statement was, as of its date, "deemed final" in accordance with the Rule (hereinafter defined) and (ii) the use and distribution of the Preliminary Official Statement by the Purchasers in connection with the public offering and sale of the Bonds. The final Official Statement, being a modification and amendment of the Preliminary Official Statement to reflect the terms of sale (together with such changes approved by any Authorized Official), shall be and is hereby in all respects approved and the Purchasers are hereby authorized to use and distribute the final Official Statement, dated _____, 2020, in the reoffering, sale and delivery of the Bonds to the public. The President and Secretary of the Board are further authorized and directed to manually execute and deliver for and on behalf of the Issuer copies of the Official Statement in final form as may be required by the Purchasers, and such final Official Statement in the form and content manually executed by said officials shall be deemed to be approved by the Board and constitute the Official Statement authorized for distribution and use by the Purchasers. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

SECTION 17: Escrow and Trust Agreement Approval and Execution. The Escrow and Trust Agreement dated as of _____, 2020 (the *Agreement*) by and between the District and The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the *Escrow Agent*), attached hereto as Exhibit C and incorporated herein by reference as a part of this Order for all purposes, is hereby approved as to form and content, and such Agreement in substantially the form and substance attached hereto, together with such changes or revisions as may be necessary to accomplish the refunding or benefit the District, is hereby authorized to be executed by the President, Board of Trustees, or any Authorized Official for and on behalf of the District and as the act and deed of the Board of Trustees; and such Agreement as executed by said officials shall be deemed approved by the Board and constitute the Agreement herein approved.

Furthermore, any Authorized Official, any one or more of said officials, and Bond Counsel in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the Escrowed Securities, if any, referenced in the Agreement and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the “MCALLEN INDEPENDENT SCHOOL DISTRICT UNLIMITED TAX REFUNDING BONDS, SERIES 2020 ESCROW FUND” (the *Escrow Fund*), including the execution of the subscription forms, if any, for the purchase and issuance of the “United States Treasury Securities - State and Local Government Series” for deposit to the Escrow Fund; all as contemplated and provided by the provisions of the Act, this Order, and the Agreement.

SECTION 18: Proceeds of Sale – Contribution from District. Immediately following the delivery of the Bonds, certain proceeds of the sale along with a cash contribution, if any, from the District (less certain costs of issuance, and accrued interest, if any, received from the Purchasers of the Bonds) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Agreement. The proceeds of sale of the Bonds not so deposited with the Escrow Agent for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance or deposited in the Bond Fund for the Bonds, all in accordance with written instructions from any Authorized Official. Amounts held in the interest and sinking fund(s) of the Refunded Obligations and not used as part of the District’s contribution to the Escrow Fund, if any, shall be deposited into the Bond Fund and used to pay principal on the Bonds.

Additionally, on or immediately prior to the date of the initial delivery of the Bonds to the Purchasers, an Authorized Official shall cause to be transferred any necessary funds in immediately available funds to the Escrow Agent from money on deposit in the interest and sinking fund(s) maintained for the payment of the Refunded Obligations certain fund(s) to accomplish the refunding of the Refunded Obligations.

SECTION 19: Redemption of Refunded Obligations. The Refunded Obligations referenced in the preamble hereof become subject to redemption prior to their stated maturities at the price of par and accrued interest to the date of redemption. The District shall give written notice to the paying agent that the Refunded Obligations have been called for redemption, and the Board of Trustees orders that such obligations are called for redemption on the redemption date set forth on Schedule I attached hereto, and such order to redeem the Refunded Obligations on such date shall be irrevocable upon the delivery of the Bonds. A copy of the notice of redemption pertaining to the Refunded Obligations is attached to this Order as Exhibit D and is incorporated herein by reference for all purposes. The paying agent is authorized and instructed to provide

notice of this redemption to the holders of the Refunded Obligations in the form and manner described in the order authorizing the issuance of the Refunded Obligations.

SECTION 20: Covenants to Maintain Tax-Exempt Status.

A. Definitions. When used in this Section, the following terms have the following meanings:

Closing Date means the date of physical delivery of the Initial Bond in exchange for the payment of the agreed purchase price for the Bonds.

Code means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

Computation Date has the meaning set forth in Section 1.148-1(b) of the Regulations.

Gross Proceeds means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

Investment has the meaning set forth in Section 1.148-1(b) of the Regulations.

Nonpurpose Investment means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

Rebate Amount has the meaning set forth in Section 1.148-1(b) of the Regulations.

Regulations means any proposed, temporary, or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

Yield of

(a) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and

(b) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

B. Not to Cause Interest to Become Taxable. The District shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing,

unless and until the District receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the District shall comply with each of the specific covenants in this Section.

C. No Private Use or Private Payments. Except to the extent it will not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the District shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes of general application within the District or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

D. No Private Loan. Except to the extent it will not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the District shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

E. Not to Invest at Higher Yield. Except to the extent it will not cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code and the Regulations and rulings thereunder, the District shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, materially exceeds the Yield of the Bonds.

F. Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the District shall not take or omit to take any

action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

G. Information Report. The District shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

H. Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The District shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the District may commingle Gross Proceeds of the Bonds with other money of the District, provided that the District separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the District shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The District shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the District shall pay to the United States out of the Bond Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The District shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

I. Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the District shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces

the amount required to be paid to the United States pursuant to Subsection H of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

J. Bonds Not Hedge Bonds.

(1) At the time the Refunded Obligations were issued, the District reasonably expected to spend at least 85% of the spendable proceeds of such bonds within three years after such bonds were issued.

(2) Not more than 50% of the proceeds of the Refunded Obligations were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(3) The District reasonably expects to spend 85% of the spendable proceeds of the Bonds within three years after the date of issuance thereof.

K. Bonds Not Advance Refunding Bonds.

(1) The Refunded Obligations are not "state or local bonds" within the meaning of section 103(a) and (c) of the Internal Revenue Code of 1986, as amended (the "Code"); therefore, the interest on the Refunded Obligations was not and will not be excludable from the gross income of the holders thereof for federal income tax purposes.

(2) The Refunded Obligations are not and will not be "tax-advantaged bonds" as defined in Section 1.150-1(b) of the Regulations.

(3) The Refunded Obligations shall be treated as a "taxable issue" as defined in Section 1.149(d)-1(e)(1) of the Regulations.

(4) The Refunded Obligations were not issued to advance refund a series of tax-exempt obligations that shall remain outstanding concurrently with the Bonds for a period of more than 90 days and shall not be taken into account as an advance refunding bond pursuant to Section 1.149(d)-1(e)(2) of the Regulations.

(5) In accordance with Section 1.149(d)-1(e)(1) of the Regulations, a series of tax-exempt bonds issued to advance refund a taxable issue is generally not treated as bonds issued to advance refund another bond as described in Code section 149(d). Therefore, the Bonds shall not be considered advance refunding bonds.

L. Elections. The District hereby directs and authorizes any Authorized Official, either or any combination of the foregoing, to make such elections in the Certificate as to Tax Exemption or similar or other appropriate certificate, form, or document permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds. Such elections shall be deemed to be made on the Closing Date.

SECTION 21: Permanent School Fund Guarantee. In accordance with the provisions of Subchapter C of Chapter 45 of the Texas Education Code, as amended, and 19 Texas Administrative Code Section 33.65, the District has made application to, and received approval

from, the Commissioner of Education of the State of Texas (the *Commissioner*) for the Bonds to be guaranteed as to the payment of principal and interest thereon by the “Permanent School Fund”, created, established, and maintained pursuant to Article VII, Section 5 of the Constitution of the State of Texas, subject to compliance with the Texas Education Agency’s rules and regulations. This constitutional provision also provides for the creation and funding of the “Available School Fund”.

A. By virtue of the approval of the Bonds being eligible for such guarantee, the District hereby covenants, agrees, and acknowledges that:

(1) Immediately following a determination by the District of its inability to pay any principal payment or interest installment on the Bonds, and in no event later than five (5) days prior to a Stated Maturity or Interest Payment Date, the Superintendent of Schools of the District shall notify the Commissioner, in the name of the District, of (a) the District’s inability to pay all or any portion of the principal amount or interest installment of one or more Bonds, (b) the total dollar amount of funds required by the District to pay in full the principal of and interest on the Bonds which the District is unable to pay, (c) the name and address of the Paying Agent/Registrar for the Bonds, (d) the date when funds for the payment of the Bonds or interest thereon shall be required to be furnished to the District and deposited with the Paying Agent/Registrar, and (e) such other information as the Commissioner shall require;

(2) Any notices to be given to the Holders hereunder shall additionally be given to the Commissioner, when and as mailed to the Holders;

(3) If the District fails to pay the principal of and interest on any Bond and the payment thereof is provided with funds from the Permanent School Fund in accordance with the guarantee, the provisions of Section 45.059(b) of the Texas Education Code, as amended, shall prevail, to the extent of conflict, over the provisions of Section 14 hereof and such amount or amounts paid with funds from the Permanent School Fund or the Available School Fund, plus interest on such amount or amounts, shall be deducted from the first funds (being foundation school fund payments first, then available school fund payments) the District would otherwise be lawfully entitled to receive from the State of Texas, until full reimbursement of such amount or amounts has been made to the Permanent School Fund;

(4) If two or more payments from the Permanent School Fund are made pursuant to the guarantee and the Commissioner determines that the District is acting in bad faith under the guarantee, the Attorney General of the State of Texas may institute appropriate legal action to compel the District and its officers, agents, and employees to comply with the duties required by law in regard to the Bonds; and

(5) If the District fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature shall not be accelerated and shall not become due by virtue of the District’s default.

If the principal of, premium, if any, and interest on the Bonds are paid prior to Stated Maturity or if the Bonds are defeased as provided in Section 23, the guarantee as to payment of

principal of and interest on the Bonds by the corpus and income of the Permanent School Fund shall immediately be terminated and be removed in its entirety. Notice of any such prepayment or defeasance shall be forwarded to the Commissioner within ten (10) calendar days of such action.

SECTION 22: Control and Custody of Bonds. The President or Vice President of the Board shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Bonds, and shall take and have charge and control of the Initial Bond pending approval by the Attorney General, the registration thereof by the Comptroller of Public Accounts, and the delivery thereof to the Purchasers.

Furthermore, each Authorized Official, or any combination thereof, is hereby authorized and directed to furnish and execute such documents relating to the District and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General and their registration by the Comptroller of Public Accounts and, together with the District's Bond Counsel, the District's Financial Advisors, and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond to the Purchasers and the initial exchange thereof for definitive Bonds.

SECTION 23: Satisfaction of Obligation of District. If the District shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Order, then the pledge of taxes levied under this Order and all covenants, agreements, and other obligations of the District to the Holders shall thereupon cease, terminate, and be discharged and satisfied..

Bonds, or any principal amounts thereof, shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amounts thereof at Stated Maturity, or the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, and/or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities will mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any money deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amounts thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof for the Bonds. In the event of a defeasance of the Bonds, the Issuer shall deliver a certificate from its financial advisor, an independent accounting firm, the Paying Agent/Registrar, or another qualified third party concerning the deposit of cash and/or Government Securities to pay, when due, the principal of, redemption premium (if any), and interest due on any defeased Bonds. To the extent applicable, if at all, the District covenants that no deposit of money or Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of section 148 of the Code (as defined in Section 18).

Any money so deposited with the Paying Agent/Registrar, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent,

pursuant to this Section which is not required for the payment of the Bonds, or any principal amounts thereof, or interest thereon with respect to which such money has been so deposited shall be remitted to the District or deposited as directed by the District. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of premium (if any), and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity or applicable redemption date of the Bonds such money was deposited and is held in trust to pay shall, upon the request of the District, be remitted to the District against a written receipt therefor, subject to the unclaimed property laws of the State of Texas.

Notwithstanding any other provision of this Order to the contrary, it is hereby provided that any determination not to redeem defeased Bonds that is made in conjunction with the payment arrangements specified in (i) or (ii) above shall not be irrevocable, provided that: (1) in the proceedings providing for such defeasance, the Issuer expressly reserves the right to call the defeased Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the defeased Bonds immediately following the defeasance; (3) directs that notice of the reservation be included in any redemption notices that it authorizes; and (4) at the time of the redemption, satisfies the conditions of (i) or (ii) above with respect to such defeased debt as though it was being defeased at the time of the exercise of the option to redeem the defeased Bonds, after taking the redemption into account in determining the sufficiency of the provisions made for the payment of the defeased Bonds.

SECTION 24: Order a Contract - Amendments - Outstanding Bonds. The District acknowledges that the covenants and obligations of the District herein contained are a material inducement to the purchase of the Bonds. This Order shall constitute a contract with the Holders from time to time, shall be binding on the District, and shall not be amended or repealed by the District so long as any Bond remains Outstanding except as permitted in this Section. The District, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Order in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the District may, with the written consent of Holders holding a majority in aggregate principal amount of the Bonds then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Order; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required for consent to any such amendment, addition, or rescission.

SECTION 25: Facilities Allotment Revenues. In connection with the issuance of the Bonds, the District may make application to the Texas Education Agency for financial assistance from the State of Texas (the *State*) in accordance with the instructional facilities allotment funding program established pursuant to Chapter 46, Texas Education Code, as amended (the *Program*). In each fiscal year in which the District received funding under the existing debt allotment program, the Program or any successor State funding programs which provide a debt service subsidy for the Bonds (such funds being collectively referred to herein as *Debt Subsidy Funds*), the District shall deposit immediately upon receipt the Debt Subsidy Funds received to the credit

of the Bond Fund created pursuant to Section 10. Notwithstanding the requirements of Section 11, if the Debt Subsidy Funds are actually on deposit in the Bond Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied pursuant to Section 11 shall be reduced to the extent and by the amount of the Debt Subsidy Funds then on deposit in the Bond Fund.

SECTION 26: Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the District covenants and agrees particularly that in the event the District (a) defaults in the payments to be made to the Bond Fund, or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Order, the Holders of any of the Bonds shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the Board and other officers of the District to observe and perform any covenant, condition, or obligation prescribed in this Order.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specification of such remedies shall not be deemed to be exclusive.

SECTION 27: Printed Opinion. The Purchasers' obligation to accept delivery of the Bonds is subject to its being furnished a final opinion of Norton Rose Fulbright US LLP, San Antonio, Texas, as Bond Counsel, approving certain legal matters as to the Bonds, the opinion to be dated and delivered as of the date of initial delivery and payment for such Bonds. Printing of a true and correct copy of the opinion on the reverse side of each of the Bonds, with an appropriate certificate pertaining thereto executed by the facsimile signature of the Secretary of the Board, is hereby approved and authorized.

SECTION 28: CUSIP Numbers. CUSIP numbers may be printed on the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the District nor Bond Counsel are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

SECTION 29: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 30: Benefits of Order. Nothing in this Order, expressed or implied, is intended or shall be construed to confer upon any person other than the District, the Paying Agent/Registrar, Bond Counsel, Financial Advisors, Purchasers, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Order or any provision hereof, this Order and all its provisions being intended to be and being for the sole and exclusive benefit of the District, the Paying Agent/Registrar, Bond Counsel, Financial Advisors, the Purchasers, and the Holders.

SECTION 31: Inconsistent Provisions. All orders, or parts thereof, which are in conflict or inconsistent with any provision of this Order are hereby repealed to the extent of such conflict, and the provisions of this Order shall be and remain controlling as to the matters herein provided.

SECTION 32: Construction of Terms. If appropriate in the context of this Order, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 33: Governing Law. This Order shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 34: Severability. If any provision of this Order or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Order and the application thereof to other persons or circumstances shall nevertheless be valid, and the Board hereby declares that this Order would have been enacted without such invalid provision.

SECTION 35: Public Meeting. It is officially found, determined, and declared that the meeting at which this Order is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Order, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 36: Authorization of Paying Agent/Registrar Agreement. The Board hereby finds and determines that it is in the best interest of the District to authorize the execution of a Paying Agent/Registrar Agreement pertaining to the registration, transferability, exchange, and payment of the Bonds. A copy of the Paying Agent/Registrar Agreement is attached hereto, in substantially final form, as Exhibit A and is incorporated herein by reference as fully as if recopied in its entirety in this Order.

SECTION 37: Incorporation of Preamble Recitals. The recitals contained in the preamble to this Order are hereby found to be true, and such recitals are hereby made a part of this Order for all purposes and are adopted as a part of the judgment and findings of the Board.

SECTION 38: Unavailability of Authorized Publication. If, because of the temporary or permanent suspension of any newspaper, journal, or other publication, or, for any reason, publication of notice cannot be made meeting any requirements herein established, any notice required to be published by the provisions of this Order shall be given in such other manner and at such time or times as in the judgment of the District or of the Paying Agent/Registrar shall most effectively approximate such required publication and the giving of such notice in such manner shall for all purposes of this Order be deemed to be in compliance with the requirements for publication thereof.

SECTION 39: No Recourse Against District Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any Bond or for any claim based thereon or on this Order against any official of the District or any person executing any Bond.

SECTION 40: Continuing Disclosure Undertaking.

A. Definitions.

As used in this Section, the following terms have the meanings ascribed to such terms below:

EMMA means the MSRB’s Electronic Municipal Market Access system, accessible by the general public, without charge, on the internet through the uniform resource locator (URL) <http://www.emma.msrb.org>.

Financial Obligation means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

MSRB means the Municipal Securities Rulemaking Board.

Rule means SEC Rule 15c2-12, as amended from time to time.

SEC means the United States Securities and Exchange Commission.

Undertaking means the District’s continuing disclosure undertaking, described in Paragraphs B through F below, hereunder accepted and entered into by the District for the purpose of compliance with the Rule.

B. Annual Reports.

The District shall file annually with the MSRB, (1) within six months after the end of each fiscal year ending in or after 2020, financial information and operating data with respect to the District of the general type included in the final Official Statement authorized by Section 16 of this Order, being the information described in Clause 1 of Exhibit E hereto, and (2) within twelve months after the end of each fiscal year ending in or after 2020, financial information and operating data with respect to the District of the general type included in the final Official Statement, being the information described in Clause 2 of Exhibit E hereto. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit E hereto, or such other accounting principles as the District may be required to employ from time to time pursuant to state law or regulation, and (ii) audited, if the District commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the District shall file unaudited financial statements within such period and audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such financial statements becomes available. Under current Texas law, including, but not limited to, Chapter 44, as amended, Texas Education Code, the District must keep its fiscal records in accordance with generally accepted accounting principles, must have its financial accounts and records audited by a certified or permitted public accountant and must file each audit report with the Texas Education Agency within 150 days after the close of the District’s fiscal year. Copies of each audit report must also be filed in the office of the District and with the Secretary, Board of Trustees. The District’s fiscal records and audit reports are available for public inspection during the regular business hours of the District. Additionally, upon the filing of these financial statements and the annual audit, these documents are subject to the Texas Open Records Act, as amended, Texas Government Code, Chapter 552.

If the District changes its fiscal year, it will file notice of such change (and of the date of the new fiscal year end) with the MSRB prior to the next date by which the District otherwise would be required to provide financial information and operating data pursuant to this Section.

C. Notice of Certain Events.

The District shall file notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) Modifications to rights of Holders of the Bonds, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the District, which shall occur as described below;
- (13) The consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional paying agent/registrars or the change of name of a paying agent/registrars, if material;
- (15) Incurrence of a Financial Obligation of the District, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms

of a Financial Obligation of the District, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the District, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the District in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District, and (b) the District intends the words used in the immediately preceding paragraphs (15) and (16) and the definition of Financial Obligation in this Section have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The District shall notify the MSRB, in a timely manner, of any failure by the District to provide financial information or operating data in accordance with this Section by the time required by this Section.

D. Limitations, Disclaimers, and Amendments.

The District shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the District remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the District in any event will give notice of any deposit that causes the Bonds to be no longer Outstanding.

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The District undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the District’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The District does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE DISTRICT BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE DISTRICT, WHETHER NEGLIGENT OR WITH OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY

RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

No default by the District in observing or performing its obligations under this Section shall constitute a breach of or default under this Order for purposes of any other provision of this Order.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the District under federal and state securities laws.

The provisions of this Section may be amended by the District from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the District, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Order that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the District (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The District may also repeal or amend the provisions of this Section if the SEC amends or repeals the applicable provisions of the Rule or any court of final jurisdiction enters judgment that such provisions of the Rule are invalid, and the District also may amend the provisions of this Section in its discretion in any other manner or circumstance, but in either case only if and to the extent that the provisions of this sentence would not have prevented an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds, giving effect to (a) such provisions as so amended and (b) any amendments or interpretations of the Rule. If the District so amends the provisions of this Section, the District shall include with any amended financial information or operating data next provided in accordance with this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

E. Information Format – Incorporation by Reference.

The District information required under this Section shall be filed with the MSRB through EMMA in such format and accompanied by such identifying information as may be specified from time to time thereby. Under the current rules of the MSRB, continuing disclosure documents submitted to EMMA must be in word-searchable portable document format (PDF) files that permit the document to be saved, viewed, printed, and retransmitted by electronic means and the series of obligations to which such continuing disclosure documents relate must be identified by CUSIP number or numbers.

Financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document) available to the public through EMMA or filed with the SEC.

F. General Policies and Procedures Concerning Compliance with the Rule.

Because the issuance of the Bonds is subject to the provisions of the Rule and because the potential “underwriters” in a negotiated sale of the Bonds or the initial purchasers in a competitive sale of the Bonds may be subject to MSRB rules and regulations with respect to such sale (including certain due diligence and suitability requirements, among others), the District hereby adopts the General Policies and Procedures Concerning Compliance with the Rule (the *Policies and Procedures*), attached hereto as Exhibit G, with which the District shall follow to assure compliance with the Undertaking. The District has developed these Policies and Procedures for the purpose of meeting its requirements of the Undertaking and, in connection therewith, has sought the guidance from its internal staff charged with administering the District’s financial affairs, its municipal or financial advisors, its legal counsel (including its Bond Counsel), and its independent accountants (to the extent determined to be necessary or advisable). The Policies and Procedures can be amended at the sole discretion of the District and any such amendment will not be deemed to be an amendment to the Undertaking. Each Authorized Official is hereby authorized to amend the Policies and Procedures as a result of a change in law, a future issuance of indebtedness subject to the Rule, or another purpose determined by the Authorized Official to be necessary or desirable for or with respect to future compliance with the Undertaking.

SECTION 41: Book-Entry Only System.

The Bonds shall initially be registered so as to participate in a securities depository system (the *DTC System*) with the Depository Trust Company, New York, New York, or any successor entity thereto (*DTC*), as set forth herein. Each Stated Maturity of the Bonds shall be issued (following cancellation of the Initial Bond described in Section 7) in the form of a separate single definitive Bond. Upon issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as the nominee of DTC, and all of the Outstanding Bonds shall be registered in the name of Cede & Co., as the nominee of DTC. The District and the Paying Agent/Registrar are authorized to execute, deliver, and take the actions set forth in such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including the Letter of Representations attached hereto as Exhibit F (the *Representation Letter*).

With respect to the Bonds registered in the name of Cede & Co., as nominee of DTC, the District and the Paying Agent/Registrar shall have no responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds the Bonds from time to time as securities depository (a *Depository Participant*) or to any person on behalf of whom such a Depository Participant holds an interest in the Bonds (an *Indirect Participant*). Without limiting the immediately preceding sentence, the District and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any Depository Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository Participant or any other person, other than a registered owner of the Bonds, as shown on the Security Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the delivery to any Depository Participant or any Indirect Participant or any other Person, other than a Holder of a Bond, of any amount with respect to principal of, premium (if any), or interest on the Bonds. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a bond certificate evidencing the obligation of the District to make payments of principal, premium (if any), and interest on the Bonds pursuant to this Order. Upon delivery by DTC to the Paying Agent/Registrar of written

notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Order with respect to interest checks or drafts being mailed to the Holder, the word “Cede & Co.” in this Order shall refer to such new nominee of DTC.

In the event that (a) the District determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (b) the Representation Letter shall be terminated for any reason, or (c) DTC or the District determines that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the District shall notify the Paying Agent/Registrar, DTC, and DTC Participants of the availability within a reasonable period of time through DTC of bond certificates, and the Bonds shall no longer be restricted to being registered in the name of Cede & Co., as nominee of DTC. At that time, the District may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a securities depository system, as may be acceptable to the District, or such depository’s agent or designee, and if the District and the Paying Agent/Registrar do not select such alternate securities depository system then the Bonds may be registered in whatever name or names the Holders of Bonds transferring or exchanging the Bonds shall designate, in accordance with the provisions hereof.

Notwithstanding any other provision of this Order to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

SECTION 42: Further Procedures. The officers and employees of the District are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the District all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Order, the initial sale and delivery of the Bonds, the Paying Agent/Registrar Agreement, the Purchase Contract, the Agreement, and the Official Statement. In addition, prior to the initial delivery of the Bonds, any Authorized Official and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Order or to any of the instruments authorized and approved by this Order necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Order and as described in the Official Statement, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Bonds by the Texas Attorney General’s office. In case any officer of the District whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 43: District’s Consent to Provide Information and Documentation to the Texas MAC. The Municipal Advisory Council of Texas (the *Texas MAC*), a non-profit membership corporation organized exclusively for non-profit purposes described in section 501(c)(6) of the Internal Revenue Code and which serves as a comprehensive financial information repository regarding municipal debt issuers in Texas, requires provision of written documentation regarding the issuance of municipal debt by the issuers thereof. In support of the purpose of the Texas MAC and in compliance with applicable law, the District hereby consents to and authorizes any Authorized Official, Bond Counsel to the District, and/or Financial Advisor to the District to

provide to the Texas MAC information and documentation requested by the Texas MAC relating to the Bonds; provided, however, that no such information and documentation shall be provided prior to the Closing Date. This consent and authorization relates only to information and documentation that is a part of the public record concerning the issuance of the Bonds.

SECTION 44: Contracts with Financial Advisor. The Board authorized the Board President, the Board Vice President, and/or the Superintendent of Schools, or their designee thereof, to take all actions necessary to execute any necessary financial advisory contracts with RBC Capital Markets, LLC, as the financial advisor to the District (the *Financial Advisor*). The District understands that under applicable federal securities laws and regulations that the District must have a contractual arrangement with its Financial Advisor relating to the sale, issuance, and delivery of the Bonds.

SECTION 45: Delegation Authorization Pursuant to HB 1295. Though such parties may be identified, and the entry into a particular form of contract may be authorized herein, pursuant to the Act, and any other applicable law, the Board, pursuant to the Act and other applicable law, hereby delegates to the Superintendent of Schools the authority to independently select the counterparty to any paying agent/registrar, rating agency, bond insurer, securities depository, escrow agent, open market securities bidding agent, verification agent or any other contract that is determined by the Superintendent of Schools, the Assistant Superintendent for Business Operations, the Chief Financial Officer, the District's Financial Advisor, or the District's Bond Counsel to be necessary or incidental to the issuance of the Bonds as long as each of such contracts has a value of less than the amount referenced in Section 2252.908 of the Texas Government Code (collectively, the *Ancillary Bond Contracts*) and, as necessary, to execute the Ancillary Bond Contracts on behalf and as the act and deed of the District. The Board has not participated in the selection of any of the business entities which are counterparties to the Ancillary Bond Contracts.

SECTION 46: Effective Date. This Order shall be in force and effect from and after its passage on the date shown below.

[The remainder of this page intentionally left blank.]

PASSED AND ADOPTED, this _____ day of _____ 2020.

MCALLEN INDEPENDENT SCHOOL
DISTRICT

President, Board of Trustees

ATTEST:

Secretary, Board of Trustees

(DISTRICT SEAL)

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SCHEDULE I

Refunded Obligations

McAllen Independent School District Unlimited Tax Refunding Bonds, Taxable Series 2013B, dated May 1, 2013, in the original principal amount of \$17,355,000 and stated to mature on February 15 in each of the years 2024 through 2030, in the aggregate principal amount of \$8,715,000. These obligations will be called for redemption on February 15, 2023.

SCHEDULE II

Approval Certificate

See Tab No. _

EXHIBIT A

Paying Agent/Registrar Agreement

See Tab No. _

EXHIBIT B

Purchase Contract

See Tab No. _

EXHIBIT C

Escrow Agreement

See Tab No. _

EXHIBIT D

Notice of Redemption

See Tab No. __

EXHIBIT E

Description of Annual Financial Information

The following information is referred to in Section 40 of this Order.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the District to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The quantitative financial information and operating data of the District of the general type included in Tables 1 through 10 and 12 through 13 in Appendix A thereof.
2. The District's audited financial statements for the most recently concluded fiscal year or to the extent these audited financial statements are not available, the portions of the unaudited financial statements of the District appended to the Official Statement as Appendix D, but for the most recently concluded fiscal year.

Accounting Principles

The accounting principles referred to in such Section are generally accepted accounting principles for governmental units as prescribed by the Government Accounting Standards Board from time to time.

EXHIBIT F

DTC Letter of Representations

See Tab No. _

EXHIBIT G

General Policies and Procedures Concerning Compliance with the Rule

- I. Capitalized terms used in this Exhibit have the meanings ascribed thereto in Sections 9 and 40 of the Order. “Bonds” refers to the Bonds that are the subject of the Order to which this Exhibit is attached.
- II. As a capital markets participant, the District is aware of its continuing disclosure requirements and obligations existing under the Rule prior to February 27, 2019, the effective date of the most recent amendment to the Rule (the *Effective Date*), and has implemented and maintained internal policies, processes, and procedures to ensure compliance therewith. Adherence to these internal policies, processes, and procedures has enabled underwriters in non-exempt negotiated sales and initial purchasers in non-exempt competitive sales to comply with their obligations arising under various MSRB rules and regulations concerning due diligence and findings of suitability, among other matters, regarding the District’s compliance with the Rule.
- III. The District is aware that the Rule was amended as of the Effective Date (the *Rule Amendment*) and has accommodated this amendment by adding subparagraphs (15) and (16) to Section 40 of the Order, which provisions are a part of the Undertaking.
- IV. The District is aware that “participating underwriters” (as such term is defined in the Rule) of the Bonds must make inquiry and reasonably believe that the District is likely to comply with the Undertaking and that the standards for determining compliance have increased over time as a result of, among others, the United States Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation Initiative and regulatory commentary relating to the effectiveness of the Rule Amendment.
- V. The District now establishes the following general policies and procedures (the *Policies and Procedures*) for satisfying its obligations pursuant to the Undertaking, which policies and procedures have been developed based on the District’s informal policies, procedures, and processes utilized prior to the Effective Date for compliance with the District’s obligations under the Rule, the advice from and discussions with the District’s internal senior staff (including staff charged with administering the District’s financial affairs), its municipal or financial advisors, its legal counsel (including Bond Counsel), and its independent accountants, to the extent determined to be necessary or advisable (collectively, the *Compliance Team*):
 - (a) The Chief Financial Officer (the *Compliance Officer*) shall be responsible for satisfying the District’s obligations pursuant to the Undertaking through adherence to these Policies and Procedures;
 - (b) the Compliance Officer shall establish reminder or “tickler” systems to identify and timely report to the MSRB, in the format thereby prescribed from time to time, the District’s information of the type described in Section 40 of the Order;

- (c) the Compliance Officer shall promptly determine the occurrence of any of the events described in Section 40 of the Order;
- (d) the Compliance Officer shall work with external consultants of the District, as and to the extent necessary, to timely prepare and file with the MSRB the annual information of the District and notice of the occurrence of any of the events referenced in Clauses (a) and (b) above, respectively, the foregoing being required to satisfy the terms of the Undertaking;
- (e) the Compliance Officer shall establish a system for identifying and monitoring any Financial Obligations, whether now existing or hereafter entered into by the Issuer, and (upon identification) determining if such Financial Obligation has the potential to materially impact the security or source of repayment of the Bonds;
- (f) upon identification of any Financial Obligation meeting the materiality standard identified in Clause (e) above, the Compliance Officer shall establish a process for identifying and monitoring any District agreement to covenants, events of default, remedies, priority rights, or other similar terms under such Financial Obligation;
- (g) the Compliance Officer shall establish a process for identifying the occurrence of any default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any Financial Obligation, the occurrence of any of which reflect financial difficulties of the District; and
- (h) the Compliance Officer shall annually review these Policies and Procedures with the remainder of the Compliance Team, make any modifications on an internal document retained by the Compliance Officer and available to any “participating underwriter” (as defined in the Rule), if requested, and on the basis of this annual review (to the extent determined to be necessary or desirable), seek additional training for herself or himself, as well as other members of the District’s internal staff identified by the Compliance Officer to assist with the District’s satisfaction of the terms and provisions of the Undertaking.

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

AN ORDER BY THE BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT AUTHORIZING THE ISSUANCE OF “MCALLEN INDEPENDENT SCHOOL DISTRICT UNLIMITED TAX REFUNDING BONDS, TAXABLE SERIES 2020”; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF THE BONDS; PRESCRIBING THE FORM, TERMS, CONDITIONS, AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, AND DELIVERY OF THE BONDS, INCLUDING THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT PERTAINING THERETO; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT, AN ESCROW AGREEMENT, AND A PURCHASE CONTRACT; COMPLYING WITH THE LETTER OF REPRESENTATIONS ON FILE WITH THE DEPOSITORY TRUST COMPANY; DELEGATING THE AUTHORITY TO CERTAIN MEMBERS OF THE BOARD OF TRUSTEES AND DISTRICT STAFF TO EXECUTE CERTAIN DOCUMENTS RELATING TO THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION OF ANY NECESSARY ENGAGEMENT AGREEMENT WITH THE DISTRICT’S FINANCIAL ADVISORS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Board of Trustees (the *Board* or the *Board of Trustees*) of the McAllen Independent School District (the *District* or the *Issuer*) has heretofore issued, sold, and delivered, and there are currently outstanding obligations, payable from ad valorem taxes, in the aggregate original principal amount of \$32,910,000 being the obligations disclosed on Schedule I attached hereto and incorporated by reference for all purposes to this order (the *Refunded Obligations*); and

WHEREAS, pursuant to the provisions of Chapter 1207, as amended, Texas Government Code (the *Act*), the Board is authorized to issue refunding bonds and deposit the proceeds of sale directly with any designated escrow agent for the Refunded Obligations, and such deposit, when made in accordance with the Act, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, when firm banking arrangements have been made for the payment of principal and interest to the stated maturity or redemption date of the Refunded Obligations, then the Refunded Obligations shall no longer be regarded as outstanding except for the purpose of receiving payment from the funds provided for such purpose and may not be included in or considered to be an indebtedness of the District for the purpose of a limitation on outstanding indebtedness or taxation or for any other purpose; and

WHEREAS, the Act permits that the deposit of the proceeds from the sale of the refunding bonds be deposited directly with any designated escrow agent for the Refunded Obligations which is not the depository bank of the District; and

WHEREAS, The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, currently serves as the paying agent/registrar for the Refunded Obligations; and

WHEREAS, The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, which is not a depository bank of the District is hereby appointed as the Escrow Agent (hereinafter defined) and Paying Agent/Registrar (hereinafter defined) for the refunding bonds; and

WHEREAS, the Board hereby finds and determines that the Refunded Obligations are scheduled to mature, or are subject to being redeemed, not more than twenty (20) years from the date of the refunding bonds herein authorized to refinance the District's debt service and such refunding will result in a gross savings of \$_____ and a net present value savings of \$_____ (_____%), including the District's cash contribution of \$_____; and

WHEREAS, the Board hereby finds and determines, pursuant to the authority provided by the Act to delegate to the Authorized Officials (defined herein) the authority to execute an "approval certificate" (a form of which is attached hereto as Schedule II) to approve the final terms of the refunding bonds issued hereunder upon obtaining the recommendation from the District's Financial Advisor; and

WHEREAS, the Board hereby finds and determines that the issuance of the refunding bonds is in the best interests of the residents of the District, now, therefore,

BE IT ORDERED BY THE BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT THAT:

SECTION 1: Authorization - Designation - Principal Amount - Purpose – Bond Date. Unlimited tax refunding bonds of the District shall be and are hereby authorized to be issued in the aggregate original principal amount of _____ AND NO/100 DOLLARS (\$_____) to be designated and bear the title "MCALLEN INDEPENDENT SCHOOL DISTRICT UNLIMITED TAX REFUNDING BONDS, TAXABLE SERIES 2020" (the *Bonds*), for the purposes of providing funds for (i) the discharge and final payment of certain obligations of the District (identified in the preamble hereof and referred to as the *Refunded Obligations*) and (ii) paying the costs and expenses of issuance of the Bonds, pursuant to the authority conferred by and in conformity with the laws of the State of Texas, including the Act. The Bonds shall be dated October 1, 2020 (the *Bond Date*) and interest shall accrue as provided in Section 2 hereof.

As authorized by the Act, the President, Board of Trustees, the Vice President, Board of Trustees, the Secretary, Board of Trustees, the Superintendent of Schools, the Assistant Superintendent for Business Operations, and the Chief Financial Officer (each of the foregoing, individually, an *Authorized Official*) are hereby authorized, appointed, and designated as the officials of the District authorized to individually act on behalf of the District in selling and delivering the Bonds authorized herein and carrying out the procedures specified in this Order, the maturity and interest payment dates, the structuring of the Bonds as current interest or capital appreciation bonds, approval of the aggregate principal amount of each maturity of the Bonds, the redemption provisions therefor, the Bond Date therefor, the rate of interest to be borne on the principal amount of each such maturity, selection of the Purchasers (defined herein), and selection

of the paying agent/registrar and escrow agent for the Bonds. Each Authorized Official, acting for and on behalf of the District, is authorized to execute the Approval Certificate in the form attached hereto as Schedule II. The Bonds shall be issued in an original aggregate principal amount not to exceed \$32,910,000; the maximum maturity of the Bonds will be February 15, 2030; the true interest rate (federal arbitrage yield) shall not exceed a rate greater than 4.00% per annum; the refunding must produce present value savings, determined on a comparative basis to the prior debt service on the Refunded Obligations, of at least 4.00% (taking into account any District cash contribution and applicable costs of issuance). The Authorized Official can determine to sell the Bonds pursuant to a private placement, negotiated sale, or competitive sale based upon the advice of the District's financial advisors. The execution of the Approval Certificate shall evidence the sale date of the Bonds by the District to the Purchasers in accordance with the provisions of the Act. Upon execution of the Approval Certificate, Bond Counsel is authorized to complete this Order to reflect such final terms applicable to the Bonds.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates. The Bonds shall be issued as fully registered obligations, without coupons, and shall be issued in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity), shall be lettered "R" and numbered consecutively from One (1) upward and principal shall become due and payable on February 15 in each of the years as described below and in amounts and bear interest at the rates per annum in accordance with the following schedule:

<u>Years of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		

The Bonds shall bear interest on the unpaid principal amounts from the Closing Date (anticipated to occur on or about October 28, 2020) or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for to Stated Maturity or prior redemption, while Outstanding, at the rates per annum shown in the above schedule (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Bonds shall be payable on February 15 and August 15 in each year (each, an *Interest Payment Date*), commencing February 15, 2021.

SECTION 3: Payment of Bonds - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds due and payable by reason of Stated Maturity, redemption, or otherwise shall be payable, without exchange or collection charges to the registered owners of the Bonds (the *Holder* or *Holder*s), appearing on the Security Register (hereinafter defined) maintained by the Paying Agent/Registrar (hereinafter defined), in any coin or currency of the

United States of America which at the time of payment is legal tender for the payment of public and private debts.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the *Paying Agent/Registrar*) to serve as the initial Paying Agent/Registrar for the Bonds is hereby approved and confirmed, and the District agrees and covenants to cause to be kept and maintained at the corporate trust office of the Paying Agent/Registrar books and records (the *Security Register*) for the registration, payment, and transfer of the Bonds, all as provided herein, in accordance with the terms and provisions of a Paying Agent/Registrar Agreement, attached hereto, in substantially final form, as Exhibit A, and such reasonable rules and regulations as the Paying Agent/Registrar and the District may prescribe. The District covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be (i) a national or state banking institution, (ii) an association or a corporation organized and doing business under the laws of the United States or any state, authorized under such laws to exercise trust powers. The Paying Agent/Registrar shall be subject to supervision or examination by federal or state authority and shall be authorized by law to serve as a Paying Agent/Registrar.

The District reserves the right to appoint a successor Paying Agent/Registrar upon providing the previous Paying Agent/Registrar with a certified copy of a resolution or order terminating such agency. Additionally, the District agrees to promptly cause a written notice of this substitution to be sent to each Holder by United States mail, first-class postage prepaid, which notice shall also give the address of the corporate trust office of the successor Paying Agent/Registrar.

Principal of, premium, if any, and interest on the Bonds, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable only to the Holder whose name appears on the Security Register (i) on the Record Date (hereinafter defined), for purposes of paying interest on the Bonds, and (ii) on the date of surrender of the Bonds for purposes of receiving payment of principal thereof and redemption premium thereon, if any, upon redemption or at the Bonds' Stated Maturity. The District and the Paying Agent/Registrar, and any agent of either, shall treat the Holder as the owner of a Bond for purposes of receiving payment and all other purposes whatsoever, and neither the District nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary.

Principal of and premium, if any, on the Bonds shall be payable only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its corporate trust office. Interest on the Bonds shall be paid to the Holder whose name appears in the Security Register at the close of business on the last business day of the month next preceding each Interest Payment Date for the Bonds (the *Record Date*) and shall be paid (i) by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, by the Paying Agent/Registrar, to the address of the Holder appearing in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested in writing by the Holder at the Holder's risk and expense.

If the date for the payment of the principal of, premium, if any, or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the corporate trust office of the Paying Agent/Registrar is located are authorized by law or

executive order to close, then the date for such payment shall be the next succeeding day which is not such a day. The payment on such date shall have the same force and effect as if made on the original date any such payment on the Bonds was due.

In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Holder of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4: No Redemption of Bonds. The Bonds are not subject to optional redemption prior to Stated Maturity.

SECTION 5: Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of every owner of the Bonds or, if appropriate, the nominee thereof. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of like kind or of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond (other than the Initial Bond authorized in Section 7 hereof) at the corporate trust office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds executed on behalf of, and furnished by, the District of authorized denomination and having the same Stated Maturity and of a like aggregate principal amount and interest rate as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest, and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the corporate trust office of the Paying Agent/Registrar. Whenever any Bonds are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds executed on behalf of, and furnished by, the District to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the corporate trust office of the Paying Agent/Registrar, or sent by United States registered mail to the Holder at his request, risk, and expense, and upon the delivery thereof, the same shall be the valid obligations of the District, evidencing the same obligation to pay, and entitled to the same benefits under this Order, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying

Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be Predecessor Bonds, evidencing all or a portion, as the case may be, of the same debt evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term Predecessor Bonds shall include any Bond registered and delivered pursuant to Section 15 of this Order in lieu of a mutilated, lost, destroyed, or stolen Bond which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

SECTION 6: Execution - Registration. The Bonds shall be executed on behalf of the District by the President or Vice President of the Board under its seal reproduced or impressed thereon and attested by the Secretary of the Board. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the District on the Bond Date shall be deemed to be duly executed on behalf of the District, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the Purchasers and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Chapter 1201, as amended, Texas Government Code.

No Bond shall be entitled to any right or benefit under this Order, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 8C, executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent by manual signature, or a certificate of registration substantially in the form provided in Section 8D, executed by the Paying Agent/Registrar by manual signature. Either of these certificates upon any Bond shall be conclusive evidence, and the only evidence required, that such Bond has been duly certified or registered and delivered.

SECTION 7: Initial Bond. The Bonds herein authorized shall be initially issued as a single fully registered Bond in the aggregate principal amount of \$_____ with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1 (the *Initial Bond*), and the Initial Bond shall be registered in the name of the Purchasers or the designee thereof, as further described in Section 16. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the Purchasers. Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the Purchasers, or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of like kind and of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates, and shall be lettered "R" and numbered consecutively from one (1) upward for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the Purchasers, or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 8: Forms.

A. Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the Assignment to be printed on each of the Bonds shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Order and may have such letters, numbers, or other marks of identification (including the identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including the guarantee of the Permanent School Fund, insurance legends in the event the Bonds, or any Stated Maturities thereof, are insured, and any reproduction of an opinion of Bond Counsel (hereinafter referenced)) thereon as may, consistent herewith, be established by the District or determined by the officers executing such Bonds as evidenced by their execution thereof. Any portion of the text of any Bond may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds shall be printed, lithographed, or engraved or produced in any other similar manner, all as determined by the officers executing the Bonds as evidenced by their execution thereof, but the Initial Bond submitted to the Attorney General of Texas may be typewritten or photocopied or otherwise reproduced.

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B. Form of Definitive Bonds.

REGISTERED
NO. R-____

REGISTERED PRINCIPAL
AMOUNT
\$ _____

United States of America
State of Texas
County of Hidalgo
MCALLEN INDEPENDENT SCHOOL DISTRICT
UNLIMITED TAX REFUNDING BONDS,
TAXABLE SERIES 2020

Bond Date: Interest Rate: Stated Maturity: CUSIP No.:
October 1, 2020

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ AND NO/100 DOLLARS

The McAllen Independent School District (the *District*), a body corporate and political subdivision in the County of Hidalgo, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above (the *Holder*), or the registered assigns thereof, the Principal Amount specified above on the Stated Maturity date specified above and to pay interest on the unpaid principal amount hereof from the Closing Date (anticipated to occur on or about October 28, 2020) or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, to Stated Maturity, at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year (each, an *Interest Payment Date*), commencing February 15, 2021.

Principal and premium, if any, of this Bond shall be payable to the Holder hereof, upon presentation and surrender, at the corporate trust office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest shall be payable to the Holder of this Bond (or one or more Predecessor Bonds, as defined in the Order hereinafter referenced) whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last business day of the month next preceding each Interest Payment Date. All payments of principal of, premium, if any, and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or before the appropriate date of payment, by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder hereof.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$ _____ (the *Bonds*) pursuant to an order adopted by the Board of Trustees of the District

(the *Order*) for the purpose of providing funds for (i) the discharge and final payment of the Refunded Obligations, and (ii) paying the costs and expenses of issuing the Bonds, pursuant to the authority conferred by and in strict conformity with the laws of the State of Texas, including the Act.

The Bonds are payable from the proceeds of an ad valorem tax levied, without limit as to rate or amount, upon all taxable property within the District.

As specified in the Order, the Bonds are not subject to redemption prior to Stated Maturity.

Reference is hereby made to the Order, a copy of which is on file in the corporate trust office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by his acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Order may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the District and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its Stated Maturity and deemed to be no longer Outstanding thereunder; and for the other terms and provisions thereof. Capitalized terms used herein have the meanings assigned to them in the Order.

This Bond, subject to certain limitations contained in the Order, may be transferred only upon its presentation and surrender at the corporate trust office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the Holder hereof, or his duly authorized agent, and such transfer is noted on the Security Register by the Paying Agent/Registrar. When a transfer occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same principal amount that remains Outstanding will be issued to the designated transferee or transferees.

The District and the Paying Agent/Registrar, and any agent of either, shall treat the Holder whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity, in whole or in part, and (iii) on any date as the owner for all other purposes, and neither the District nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the District. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the District is a duly organized and legally existing governmental agency under and by virtue of the laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the District have been properly done, have happened, and have been performed in regular and due time, form and manner as required by the laws of the State of Texas and the Order; that the Bonds do not exceed any Constitutional or statutory limitations; and that due provision has been made for the payment of the principal of and interest on the Bonds by the levy of a tax as aforestated. In case any provision in this Bond or application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications of this Bond shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Order shall be construed in accordance with and shall be governed by the laws of the State of Texas.

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IN WITNESS WHEREOF, the Board of Trustees of the District has caused this Bond to be duly executed under its official seal.

MCALLEN INDEPENDENT SCHOOL
DISTRICT

President, Board of Trustees

ATTEST:

Secretary, Board of Trustees

(DISTRICT SEAL)

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C. *Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Bond only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER OF §
PUBLIC ACCOUNTS §
THE STATE OF TEXAS § REGISTER NO. _____
§

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

*NOTE TO PRINTER: Do Not Print on Definitive Bonds.

D. *Form of Registration Certificate of Paying Agent/Registrar to appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued under the provisions of the within-mentioned Order; the Bond or Bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

Registered this date: THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., Dallas, Texas, as
Paying Agent/Registrar

_____ By: _____
Authorized Signature

*NOTE TO PRINTER: Print on Definitive Bonds.

E. Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number): _____

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

Signature guaranteed:

[The remainder of this page intentionally left blank]

F. Form of Initial Bond. The Initial Bond shall be in the form set forth in paragraph B of this Section, except as follows:

Heading and first two paragraphs shall be amended to read as follows:

REGISTERED NO. T-__	REGISTERED PRINCIPAL AMOUNT \$ _____
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United States of America
State of Texas
County of Hidalgo
MCALLEN INDEPENDENT SCHOOL DISTRICT
UNLIMITED TAX REFUNDING BONDS,
TAXABLE SERIES 2020

<u>Bond Date:</u> October 1, 2020	<u>Stated Maturity:</u> As Shown Below	<u>Interest Rate:</u> As Shown Below	<u>CUSIP No.:</u>
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REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ AND NO/100 DOLLARS

The McAllen Independent School District (the *District*), a body corporate and political subdivision in the County of Hidalgo, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above (the *Holder*), or the registered assigns thereof, the Principal Amount specified above on the fifteenth day of February in each of the years and in the Principal Amounts and bearing interest at the per annum rates in accordance with the following schedule:

<u>Years of</u> <u>Stated Maturity</u>	<u>Principal</u> <u>Amounts (\$)</u>	<u>Interest</u> <u>Rates (%)</u>
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(Information to be inserted from schedule in Section 2 hereof.)

and to pay interest on the unpaid Principal Amount hereof from the Closing Date (anticipated to occur on or about October 28, 2020) or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, to Stated Maturity, while Outstanding, at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year (each, an *Interest Payment Date*), commencing February 15, 2021.

Principal and premium, if any, of this Bond shall be payable at its Stated Maturity, while Outstanding, to the Holder hereof, upon its presentation and surrender, at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the *Paying Agent/Registrar*). Interest shall be payable to the Holder of this Bond whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record

Date, which is the last business day of the month next preceding each Interest Payment Date. All payments of principal of, premium, if any, and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder hereof.

G. Permanent School Fund or Insurance Legends. If bond insurance is obtained by the Purchasers or if the Bonds are guaranteed by the Permanent School Fund of the State of Texas, the Definitive Bonds and the Initial Bond shall bear an appropriate legend as provided by the bond insurer or the Texas Education Agency, as applicable, to appear under the following header (as applicable):

[BOND INSURANCE] or [PERMANENT SCHOOL FUND GUARANTEE]

SECTION 9: Definitions. For all purposes of this Order (as defined below), except as otherwise expressly provided or unless the context otherwise requires: (i) the terms defined in this Section have the meanings assigned to them in this Section, and certain terms used in Sections 20 and 40 of this Order have the meanings assigned to them in Sections 20 and 40 of this Order, and all such terms, include the plural as well as the singular; (ii) all references in this Order to designated “Sections” and other subdivisions are to the designated Sections and other subdivisions of this Order as originally adopted; and (iii) the words “herein”, “hereof”, and “hereunder” and other words of similar import refer to this Order as a whole and not to any particular Section or other subdivision.

(1) The term *Authorized Official* shall mean the President, Board of Trustees, the Vice President, Board of Trustees, the Secretary, Board of Trustees, the Superintendent of Schools, the Assistant Superintendent for Business Operations, and the Chief Financial Officer (or any successor to any of the aforementioned persons serving in the indicated capacity).

(2) The term *Bond Date* shall mean October 1, 2020.

(3) The term *Closing Date* shall mean the date of physical delivery of the Initial Bond in exchange for the payment of the agreed purchase price for the Bonds.

(4) The term *Government Securities* shall mean (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its equivalent; (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its

equivalent; or (iv) any additional securities and obligations hereafter authorized by the laws of the State of Texas as eligible for use to accomplish the discharge of obligations such as the Bonds.

(5) The term *Holder* or *Holder*s shall mean the registered owner or owners of the Bonds appearing on the Security Register maintained by the Paying Agent/Registrar.

(6) The term *Interest Payment Date* shall mean the date interest is payable on the Bonds, being February 15 and August 15 of each year, commencing February 15, 2021, while any of the Bonds remain Outstanding.

(7) The term *Order* shall mean this order adopted by the Board of Trustees on _____, 2020.

(8) The term *Outstanding* shall mean, as of the date of determination, all Bonds issued and delivered under this Order, except:

(a) those Bonds canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(b) those Bonds for which payment has been duly provided by the District in accordance with the provisions of Section 23 of this Order; and

(c) those Bonds that have been mutilated, destroyed, lost, or stolen and replacement Bonds have been registered and delivered in lieu thereof as provided in Section 15 of this Order.

(9) The term *Purchasers* shall mean the initial purchasers of the Bonds named in Section 16 of this Order.

(10) The term *Stated Maturity* shall mean the annual principal payments of the Bonds, payable on February 15 of each year as set forth in Section 2 of this Order.

SECTION 10: Bond Fund - Investments. For the purpose of paying the principal of, premium, if any, and interest on the Bonds, at Stated Maturity, there shall be and is hereby created a special Fund to be designated “MCALLEN INDEPENDENT SCHOOL DISTRICT UNLIMITED TAX REFUNDING BONDS, TAXABLE SERIES 2020 INTEREST AND SINKING FUND” (the *Bond Fund*), which Fund shall be kept and maintained at the District’s depository bank, and money deposited in such Fund shall be used for no other purpose and shall be maintained as provided in Section 23. Each Authorized Official of the District is hereby authorized and directed to make withdrawals from the Bond Fund sufficient to pay the principal of and interest on the Bonds as the same become due and payable or the purchase price thereof, and shall cause to be transferred to the Paying Agent/Registrar from money on deposit in the Bond Fund an amount sufficient to pay the purchase price or the amount of principal, premium, if any, and/or interest stated to mature on the Bonds, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each interest and principal payment date for the Bonds. To the extent that the District receives an allocation from the Existing Debt Allotment or the Instructional Facilities Allotment established pursuant to

Chapter 46, as amended, Texas Education Code or credits a portion of its Basic Allotment established pursuant to Subchapter B of Chapter 42, as amended, Texas Education Code, in order to satisfy Section 45.0031, as amended, Texas Education Code, the District will comply with the provisions of Section 46.009(d), as amended, Texas Education Code, and the aforementioned Section 45.0031 concerning the deposit of these funds into the Bond Fund.

Pending the transfer of funds to the Paying Agent/Registrar, money in any fund created and established pursuant to the provisions of this Order may, at the option of the District, be placed in time deposits, certificates of deposit, guaranteed investment contracts, or similar contractual agreements, as permitted by the provisions of the Public Funds Investment Act, as amended, Chapter 2256, Texas Government Code, secured (to the extent not insured by the Federal Deposit Insurance Corporation) by obligations of the type hereinafter described, or be invested, as authorized by any law, including investments held in book-entry form, in securities including, but not limited to, direct obligations of the United States of America, obligations guaranteed or insured by the United States of America, which, in the opinion of the Attorney General of the United States, are backed by its full faith and credit or represent its general obligations, or invested in indirect obligations of the United States of America, including, but not limited to, evidences of indebtedness issued, insured or guaranteed by such governmental agencies as the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Government National Mortgage Association, Small Business Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from the Bond Fund will be available at the proper time or times. All interest and income derived from deposits and investments in any funds created pursuant to the provisions of this Order shall be credited to, and any losses debited to, such fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds.

SECTION 11: Levy of Taxes - Surplus Bond Proceeds. To provide for the payment of Bonds, there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the District, without legal limit as to rate or amount, sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same becomes due and payable; and such tax hereby levied on each one hundred dollars valuation of taxable property in the District for the payment of the Bonds shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of, premium, if any, and interest on the Bonds, while any Bond remains Outstanding; full allowance being made for delinquencies and costs of collection. The taxes levied, assessed, and collected for and on account of the Bonds shall be accounted for separate and apart from all other funds of the District and shall be deposited into the Bond Fund; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Bonds.

Accrued interest, if any, on the Bonds received from the Purchasers, along with any taxes collected after the Closing Date pertaining to the Refunded Obligations, shall be deposited into the Bond Fund. In addition, any surplus proceeds, including investment income therefrom, from the sale of the Bonds (which includes unspent investment income from Bond proceeds) not expended for authorized purposes shall be deposited into the Bond Fund, and such amounts so deposited shall reduce the sum otherwise required to be deposited in the Bond Fund from ad valorem taxes.

SECTION 12: Security of Funds. All money on deposit in the Fund for which this Order makes provision (except any portion thereof as may be at any time properly invested as provided herein) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and money on deposit in such Fund shall be used only for the purposes permitted by this Order.

SECTION 13: Notices to Holders - Waiver. Wherever this Order provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Holders. Where this Order provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 14: Cancellation. All Bonds surrendered for payment, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the District, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The District may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the District may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the District.

SECTION 15: Mutilated - Destroyed - Lost and Stolen Bonds. If (1) any mutilated Bond is surrendered to the Paying Agent/Registrar, or the District and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Bond, and (2) there is delivered to the District and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the District or the Paying Agent/Registrar that such Bond has been acquired by a bona fide purchaser, the District shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Bond, a new Bond of the same Stated Maturity, interest rate, and of like tenor and principal amount, as applicable, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Bond has become or is about to become due and payable, the District in its discretion may, instead of issuing a new Bond, pay such Bond.

Upon the issuance of any new Bond, or payment in lieu thereof, under this Section, the District may require payment by the Holder of a sum sufficient to cover any tax or other

governmental charge imposed in relation thereto and any other expenses or charges (including attorney's fees and the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the District, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Order equally and ratably with all other Outstanding Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 16: Sale of Bonds at a Negotiated Sale – Authorization of Purchase Contract – Official Statement Approval – Use of Proceeds. The Bonds authorized by this Order are hereby sold by the District to _____, _____, _____, as the authorized representative of a group of underwriters at a negotiated sale (the *Purchasers*, having all the rights, benefits, and obligations of a Holder), in accordance with the provisions of a Purchase Contract (the *Purchase Contract*), dated _____, 2020, attached hereto as Exhibit B and incorporated herein by reference as a part of this Order for all purposes. The pricing and terms of the sale of the Bonds are hereby found and determined to be the most advantageous reasonably obtainable by the Issuer. The Initial Bond shall be registered in the name of _____. Any Authorized Official is hereby authorized and directed to execute the Purchase Contract for and on behalf of the Issuer and as the act and deed of this Board, and in regard to the approval and execution of the Purchase Contract, the Board hereby finds, determines and declares that the representations, warranties, and agreements of the Issuer contained in the Purchase Contract are true and correct in all material respects and shall be honored and performed by the Issuer. Delivery of the Bonds to the Purchasers shall occur as soon as practicable after the adoption of this Order, upon payment therefor in accordance with the terms of the Purchase Contract.

Furthermore, the District hereby ratifies, confirms, and approves in all respects (i) the Issuer's prior determination that the Preliminary Official Statement was, as of its date, "deemed final" in accordance with the Rule (hereinafter defined) and (ii) the use and distribution of the Preliminary Official Statement by the Purchasers in connection with the public offering and sale of the Bonds. The final Official Statement, being a modification and amendment of the Preliminary Official Statement to reflect the terms of sale (together with such changes approved by any Authorized Official), shall be and is hereby in all respects approved and the Purchasers are hereby authorized to use and distribute the final Official Statement, dated _____, 2020, in the reoffering, sale and delivery of the Bonds to the public. The President and Secretary of the Board are further authorized and directed to manually execute and deliver for and on behalf of the Issuer copies of the Official Statement in final form as may be required by the Purchasers, and such final Official Statement in the form and content manually executed by said officials shall be deemed to be approved by the Board and constitute the Official Statement authorized for distribution and use by the Purchasers. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

SECTION 17: Escrow and Trust Agreement Approval and Execution. The Escrow and Trust Agreement dated as of _____, 2020 (the *Agreement*) by and between the District and The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the *Escrow Agent*), attached hereto as Exhibit C and incorporated herein by reference as a part of this Order for all purposes, is hereby approved as to form and content, and such Agreement in substantially the form and substance attached hereto, together with such changes or revisions as may be necessary to accomplish the refunding or benefit the District, is hereby authorized to be executed by the President, Board of Trustees, or any Authorized Official for and on behalf of the District and as the act and deed of the Board of Trustees; and such Agreement as executed by said officials shall be deemed approved by the Board and constitute the Agreement herein approved.

Furthermore, any Authorized Official, any one or more of said officials, and Bond Counsel in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the Escrowed Securities, if any, referenced in the Agreement and the delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the “MCALLEN INDEPENDENT SCHOOL DISTRICT UNLIMITED TAX REFUNDING BONDS, TAXABLE SERIES 2020 ESCROW FUND” (the *Escrow Fund*), including the execution of the subscription forms, if any, for the purchase and issuance of the “United States Treasury Securities - State and Local Government Series” for deposit to the Escrow Fund; all as contemplated and provided by the provisions of the Act, this Order, and the Agreement.

SECTION 18: Proceeds of Sale - Contribution from District. Immediately following the delivery of the Bonds, certain proceeds of the sale along with a cash contribution, if any, from the District (less certain costs of issuance, and accrued interest, if any, received from the Purchasers of the Bonds) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Agreement. The proceeds of sale of the Bonds not so deposited with the Escrow Agent for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance or deposited in the Bond Fund for the Bonds, all in accordance with written instructions from any Authorized Official. Amounts held in the interest and sinking fund(s) of the Refunded Obligations and not used as part of the District’s contribution to the Escrow Fund, if any, shall be deposited into the Bond Fund and used to pay principal on the Bonds.

Additionally, on or immediately prior to the date of the initial delivery of the Bonds to the Purchasers, an Authorized Official shall cause to be transferred any necessary funds in immediately available funds to the Escrow Agent from money on deposit in the interest and sinking fund(s) maintained for the payment of the Refunded Obligations certain fund to accomplish the refunding of the Refunded Obligations.

SECTION 19: Redemption of Refunded Obligations. The Refunded Obligations referenced in the preamble hereof become subject to redemption prior to their stated maturities at the price of par and accrued interest to the date of redemption. The District shall give written notice to the paying agent that the Refunded Obligations have been called for redemption, and the Board of Trustees orders that such obligations are called for redemption on the redemption date set forth on Schedule I attached hereto, and such order to redeem the Refunded Obligations on such date shall be irrevocable upon the delivery of the Bonds. A copy of the notice of redemption pertaining to the Refunded Obligations is attached to this Order as Exhibit D and is incorporated

herein by reference for all purposes. The paying agent is authorized and instructed to provide notice of this redemption to the holders of the Refunded Obligations in the form and manner described in the order authorizing the issuance of the Refunded Obligations.

SECTION 20: Taxable Obligations. The Bonds are not “state or local bonds” within the meaning of section 103(a) and (c) of the Internal Revenue Code of 1986, as amended; therefore, the interest on the Bonds is not excludable from the gross income of the holders thereof for federal income tax purposes.

SECTION 21: Permanent School Fund Guarantee. In accordance with the provisions of Subchapter C of Chapter 45 of the Texas Education Code, as amended, and 19 Texas Administrative Code Section 33.65, the District has made application to, and received approval from, the Commissioner of Education of the State of Texas (the *Commissioner*) for the Bonds to be guaranteed as to the payment of principal and interest thereon by the “Permanent School Fund”, created, established, and maintained pursuant to Article VII, Section 5 of the Constitution of the State of Texas, subject to compliance with the Texas Education Agency’s rules and regulations. This constitutional provision also provides for the creation and funding of the “Available School Fund”.

A. By virtue of the approval of the Bonds being eligible for such guarantee, the District hereby covenants, agrees, and acknowledges that:

(1) Immediately following a determination by the District of its inability to pay any principal payment or interest installment on the Bonds, and in no event later than five (5) days prior to a Stated Maturity or Interest Payment Date, the Superintendent of Schools of the District shall notify the Commissioner, in the name of the District, of (a) the District’s inability to pay all or any portion of the principal amount or interest installment of one or more Bonds, (b) the total dollar amount of funds required by the District to pay in full the principal of and interest on the Bonds which the District is unable to pay, (c) the name and address of the Paying Agent/Registrar for the Bonds, (d) the date when funds for the payment of the Bonds or interest thereon shall be required to be furnished to the District and deposited with the Paying Agent/Registrar, and (e) such other information as the Commissioner shall require;

(2) Any notices to be given to the Holders hereunder shall additionally be given to the Commissioner, when and as mailed to the Holders;

(3) If the District fails to pay the principal of and interest on any Bond and the payment thereof is provided with funds from the Permanent School Fund in accordance with the guarantee, the provisions of Section 45.059(b) of the Texas Education Code, as amended, shall prevail, to the extent of conflict, over the provisions of Section 14 hereof and such amount or amounts paid with funds from the Permanent School Fund or the Available School Fund, plus interest on such amount or amounts, shall be deducted from the first funds (being foundation school fund payments first, then available school fund payments) the District would otherwise be lawfully entitled to receive from the State of Texas, until full reimbursement of such amount or amounts has been made to the Permanent School Fund;

(4) If two or more payments from the Permanent School Fund are made pursuant to the guarantee and the Commissioner determines that the District is acting in bad faith under the guarantee, the Attorney General of the State of Texas may institute appropriate legal action to compel the District and its officers, agents, and employees to comply with the duties required by law in regard to the Bonds; and

(5) If the District fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature shall not be accelerated and shall not become due by virtue of the District's default.

(6) If the principal of, premium, if any, and interest on the Bonds are paid prior to Stated Maturity or if the Bonds are defeased as provided in Section 23, the guarantee as to payment of principal of and interest on the Bonds by the corpus and income of the Permanent School Fund shall immediately be terminated and be removed in its entirety. Notice of any such prepayment or defeasance shall be forwarded to the Commissioner within ten (10) calendar days of such action.

SECTION 22: Control and Custody of Bonds. The President or Vice President of the Board shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Bonds, and shall take and have charge and control of the Initial Bond pending approval by the Attorney General, the registration thereof by the Comptroller of Public Accounts, and the delivery thereof to the Purchasers.

Furthermore, each Authorized Official, or any combination thereof, is hereby authorized and directed to furnish and execute such documents relating to the District and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General and their registration by the Comptroller of Public Accounts and, together with the District's Bond Counsel, the District's Financial Advisors, and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond to the Purchasers and the initial exchange thereof for definitive Bonds.

SECTION 23: Satisfaction of Obligation of District. If the District shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Order, then the pledge of taxes levied under this Order and all covenants, agreements, and other obligations of the District to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds, or any principal amounts thereof, shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amounts thereof at Stated Maturity, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, and/or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities will mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any money deposited therewith, if any, to pay when due the principal of and interest on such Bonds,

or the principal amounts thereof, on and prior to the Stated Maturity thereof. In the event of a defeasance of the Bonds, the District shall deliver a certificate from its financial advisor, an independent accounting firm, the Paying Agent/Registrar, or another qualified third party concerning the deposit of cash and/or Government Securities to pay, when due, the principal of, and interest due on any defeased Bonds.

Any money so deposited with the Paying Agent/Registrar, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amounts thereof, or interest thereon with respect to which such money has been so deposited shall be remitted to the District or deposited as directed by the District. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of premium (if any), and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity of the Bonds such money was deposited and is held in trust to pay shall, upon the request of the District, be remitted to the District against a written receipt therefor, subject to the unclaimed property laws of the State of Texas.

SECTION 24: Order a Contract - Amendments - Outstanding Bonds. The District acknowledges that the covenants and obligations of the District herein contained are a material inducement to the purchase of the Bonds. This Order shall constitute a contract with the Holders from time to time, shall be binding on the District, and shall not be amended or repealed by the District so long as any Bond remains Outstanding except as permitted in this Section. The District, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Order in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the District may, with the written consent of Holders holding a majority in aggregate principal amount of the Bonds then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Order; provided that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required for consent to any such amendment, addition, or rescission.

SECTION 25: Facilities Allotment Revenues. In connection with the issuance of the Bonds, the District may make application to the Texas Education Agency for financial assistance from the State of Texas (the *State*) in accordance with the instructional facilities allotment funding program established pursuant to Chapter 46, Texas Education Code, as amended (the *Program*). In each fiscal year in which the District received funding under the existing debt allotment program, the Program or any successor State funding programs which provide a debt service subsidy for the Bonds (such funds being collectively referred to herein as *Debt Subsidy Funds*), the District shall deposit immediately upon receipt the Debt Subsidy Funds received to the credit of the Bond Fund created pursuant to Section 10. Notwithstanding the requirements of Section 11, if the Debt Subsidy Funds are actually on deposit in the Bond Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which

otherwise would have been required to be levied pursuant to Section 11 shall be reduced to the extent and by the amount of the Debt Subsidy Funds then on deposit in the Bond Fund.

SECTION 26: Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the District covenants and agrees particularly that in the event the District (a) defaults in the payments to be made to the Bond Fund, or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Order, the Holders of any of the Bonds shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the Board and other officers of the District to observe and perform any covenant, condition, or obligation prescribed in this Order.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specification of such remedies shall not be deemed to be exclusive.

SECTION 27: Printed Opinion. The Purchasers' obligation to accept delivery of the Bonds is subject to its being furnished a final opinion of Norton Rose Fulbright US LLP, San Antonio, Texas, as Bond Counsel, approving certain legal matters as to the Bonds, the opinion to be dated and delivered as of the date of initial delivery and payment for such Bonds. Printing of a true and correct copy of the opinion on the reverse side of each of the Bonds, with an appropriate certificate pertaining thereto executed by the facsimile signature of the Secretary of the Board, is hereby approved and authorized.

SECTION 28: CUSIP Numbers. CUSIP numbers may be printed on the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the District nor Bond Counsel are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

SECTION 29: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 30: Benefits of Order. Nothing in this Order, expressed or implied, is intended or shall be construed to confer upon any person other than the District, the Paying Agent/Registrar, Bond Counsel, Financial Advisors, Purchasers, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Order or any provision hereof, this Order and all its provisions being intended to be and being for the sole and exclusive benefit of the District, the Paying Agent/Registrar, Bond Counsel, Financial Advisors, the Purchasers, and the Holders.

SECTION 31: Inconsistent Provisions. All orders, or parts thereof, which are in conflict or inconsistent with any provision of this Order are hereby repealed to the extent of such conflict, and the provisions of this Order shall be and remain controlling as to the matters herein provided.

SECTION 32: Construction of Terms. If appropriate in the context of this Order, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 33: Governing Law. This Order shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 34: Severability. If any provision of this Order or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Order and the application thereof to other persons or circumstances shall nevertheless be valid, and the Board hereby declares that this Order would have been enacted without such invalid provision.

SECTION 35: Public Meeting. It is officially found, determined, and declared that the meeting at which this Order is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Order, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 36: Authorization of Paying Agent/Registrar Agreement. The Board hereby finds and determines that it is in the best interest of the District to authorize the execution of a Paying Agent/Registrar Agreement pertaining to the registration, transferability, exchange, and payment of the Bonds. A copy of the Paying Agent/Registrar Agreement is attached hereto, in substantially final form, as Exhibit A and is incorporated herein by reference as fully as if recopied in its entirety in this Order.

SECTION 37: Incorporation of Preamble Recitals. The recitals contained in the preamble to this Order are hereby found to be true, and such recitals are hereby made a part of this Order for all purposes and are adopted as a part of the judgment and findings of the Board.

SECTION 38: Unavailability of Authorized Publication. If, because of the temporary or permanent suspension of any newspaper, journal, or other publication, or, for any reason, publication of notice cannot be made meeting any requirements herein established, any notice required to be published by the provisions of this Order shall be given in such other manner and at such time or times as in the judgment of the District or of the Paying Agent/Registrar shall most effectively approximate such required publication and the giving of such notice in such manner shall for all purposes of this Order be deemed to be in compliance with the requirements for publication thereof.

SECTION 39: No Recourse Against District Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any Bond or for any claim based thereon or on this Order against any official of the District or any person executing any Bond.

SECTION 40: Continuing Disclosure Undertaking.

A. Definitions.

As used in this Section, the following terms have the meanings ascribed to such terms below:

EMMA means the MSRB's Electronic Municipal Market Access system, accessible by the general public, without charge, on the internet through the uniform resource locator (URL) <http://www.emma.msrb.org>.

Financial Obligation means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

MSRB means the Municipal Securities Rulemaking Board.

Rule means SEC Rule 15c2-12, as amended from time to time.

SEC means the United States Securities and Exchange Commission.

Undertaking means the District’s continuing disclosure undertaking, described in Paragraphs B through F below, hereunder accepted and entered into by the District for the purpose of compliance with the Rule.

B. Annual Reports.

The District shall file annually with the MSRB, (1) within six months after the end of each fiscal year ending in or after 2020, financial information and operating data with respect to the District of the general type included in the final Official Statement authorized by Section 16 of this Order, being the information described in Clause 1 of Exhibit E hereto, and (2) within twelve months after the end of each fiscal year ending in or after 2020, financial information and operating data with respect to the District of the general type included in the final Official Statement, being the information described in Clause 2 of Exhibit E hereto. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit E hereto, or such other accounting principles as the District may be required to employ from time to time pursuant to state law or regulation, and (ii) audited, if the District commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the District shall file unaudited financial statements within such period and audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such financial statements becomes available. Under current Texas law, including, but not limited to, Chapter 44, as amended, Texas Education Code, the District must keep its fiscal records in accordance with generally accepted accounting principles, must have its financial accounts and records audited by a certified or permitted public accountant and must file each audit report with the Texas Education Agency within 150 days after the close of the District’s fiscal year. Copies of each audit report must also be filed in the office of the District and with the Secretary, Board of Trustees. The District’s fiscal records and audit reports are available for public inspection during the regular business hours of the District. Additionally, upon the filing of these financial statements and the annual audit, these documents are subject to the Texas Open Records Act, as amended, Texas Government Code, Chapter 552.

If the District changes its fiscal year, it will file notice of such change (and of the date of the new fiscal year end) with the MSRB prior to the next date by which the District otherwise would be required to provide financial information and operating data pursuant to this Section.

C. Notice of Certain Events.

The District shall file notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) Modifications to rights of Holders of the Bonds, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the District, which shall occur as described below;
- (13) The consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional paying agent/registrars or the change of name of a paying agent/registrars, if material;
- (15) Incurrence of a Financial Obligation of the District, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the District, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the District, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer, and (b) the District intends the words used in the immediately preceding paragraphs (15) and (16) and the definition of Financial Obligation in this Section have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The District shall notify the MSRB, in a timely manner, of any failure by the District to provide financial information or operating data in accordance with this Section by the time required by this Section.

D. Limitations, Disclaimers, and Amendments.

The District shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the District remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the District in any event will give notice of any deposit that causes the Bonds to be no longer Outstanding.

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The District undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the District’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The District does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE DISTRICT BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE DISTRICT, WHETHER NEGLIGENT OR WITH OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

No default by the District in observing or performing its obligations under this Section shall constitute a breach of or default under this Order for purposes of any other provision of this Order.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the District under federal and state securities laws.

The provisions of this Section may be amended by the District from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the District, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Order that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the District (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The District may also repeal or amend the provisions of this Section if the SEC amends or repeals the applicable provisions of the Rule or any court of final jurisdiction enters judgment that such provisions of the Rule are invalid, and the District also may amend the provisions of this Section in its discretion in any other manner or circumstance, but in either case only if and to the extent that the provisions of this sentence would not have prevented an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds, giving effect to (a) such provisions as so amended and (b) any amendments or interpretations of the Rule. If the District so amends the provisions of this Section, the District shall include with any amended financial information or operating data next provided in accordance with this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

E. Information Format – Incorporation by Reference.

The District information required under this Section shall be filed with the MSRB through EMMA in such format and accompanied by such identifying information as may be specified from time to time thereby. Under the current rules of the MSRB, continuing disclosure documents submitted to EMMA must be in word-searchable portable document format (PDF) files that permit the document to be saved, viewed, printed, and retransmitted by electronic means and the series of obligations to which such continuing disclosure documents relate must be identified by CUSIP number or numbers.

Financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document) available to the public through EMMA or filed with the SEC.

F. General Policies and Procedures Concerning Compliance with the Rule.

Because the issuance of the Bonds is subject to the provisions of the Rule and because the potential “underwriters” in a negotiated sale of the Bonds or the initial purchasers in a competitive sale of the Bonds may be subject to MSRB rules and regulations with respect to such sale (including certain due diligence and suitability requirements, among others), the District hereby

adopts the General Policies and Procedures Concerning Compliance with the Rule (the *Policies and Procedures*), attached hereto as Exhibit G, with which the District shall follow to assure compliance with the Undertaking. The District has developed these Policies and Procedures for the purpose of meeting its requirements of the Undertaking and, in connection therewith, has sought the guidance from its internal staff charged with administering the District's financial affairs, its municipal or financial advisors, its legal counsel (including its Bond Counsel), and its independent accountants (to the extent determined to be necessary or advisable). The Policies and Procedures can be amended at the sole discretion of the District and any such amendment will not be deemed to be an amendment to the Undertaking. Each Authorized Official is hereby authorized to amend the Policies and Procedures as a result of a change in law, a future issuance of indebtedness subject to the Rule, or another purpose determined by the Authorized Official to be necessary or desirable for or with respect to future compliance with the Undertaking.

SECTION 41: Book-Entry Only System.

The Bonds shall initially be registered so as to participate in a securities depository system (the *DTC System*) with the Depository Trust Company, New York, New York, or any successor entity thereto (*DTC*), as set forth herein. Each Stated Maturity of the Bonds shall be issued (following cancellation of the Initial Bond described in Section 7) in the form of a separate single definitive Bond. Upon issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as the nominee of DTC, and all of the Outstanding Bonds shall be registered in the name of Cede & Co., as the nominee of DTC. The District and the Paying Agent/Registrar are authorized to execute, deliver, and take the actions set forth in such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including the Letter of Representations attached hereto as Exhibit F (the *Representation Letter*).

With respect to the Bonds registered in the name of Cede & Co., as nominee of DTC, the District and the Paying Agent/Registrar shall have no responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds the Bonds from time to time as securities depository (a *Depository Participant*) or to any person on behalf of whom such a Depository Participant holds an interest in the Bonds (an *Indirect Participant*). Without limiting the immediately preceding sentence, the District and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any Depository Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository Participant or any other person, other than a registered owner of the Bonds, as shown on the Security Register, of any notice with respect to the Bonds, or (iii) the delivery to any Depository Participant or any Indirect Participant or any other Person, other than a Holder of a Bond, of any amount with respect to principal of, premium (if any), or interest on the Bonds. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a bond certificate evidencing the obligation of the District to make payments of principal, premium (if any), and interest on the Bonds pursuant to this Order. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Order with respect to interest checks or drafts being mailed to the Holder, the word "Cede & Co." in this Order shall refer to such new nominee of DTC.

In the event that (a) the District determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (b) the Representation Letter shall be terminated for any reason, or (c) DTC or the District determines that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the District shall notify the Paying Agent/Registrar, DTC, and DTC Participants of the availability within a reasonable period of time through DTC of bond certificates, and the Bonds shall no longer be restricted to being registered in the name of Cede & Co., as nominee of DTC. At that time, the District may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a securities depository system, as may be acceptable to the District, or such depository's agent or designee, and if the District and the Paying Agent/Registrar do not select such alternate securities depository system then the Bonds may be registered in whatever name or names the Holders of Bonds transferring or exchanging the Bonds shall designate, in accordance with the provisions hereof.

Notwithstanding any other provision of this Order to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

SECTION 42: Further Procedures. The officers and employees of the District are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the District all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Order, the initial sale and delivery of the Bonds, the Paying Agent/Registrar Agreement, the Purchase Contract, the Agreement, and the Official Statement. In addition, prior to the initial delivery of the Bonds, any Authorized Official and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Order or to any of the instruments authorized and approved by this Order necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Order and as described in the Official Statement, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Bonds by the Texas Attorney General's office. In case any officer of the District whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 43: District's Consent to Provide Information and Documentation to the Texas MAC. The Municipal Advisory Council of Texas (the *Texas MAC*), a non-profit membership corporation organized exclusively for non-profit purposes described in section 501(c)(6) of the Internal Revenue Code and which serves as a comprehensive financial information repository regarding municipal debt issuers in Texas, requires provision of written documentation regarding the issuance of municipal debt by the issuers thereof. In support of the purpose of the Texas MAC and in compliance with applicable law, the District hereby consents to and authorizes any Authorized Official, Bond Counsel to the District, and/or Financial Advisor to the District to provide to the Texas MAC information and documentation requested by the Texas MAC relating to the Bonds; provided, however, that no such information and documentation shall be provided

prior to the Closing Date. This consent and authorization relates only to information and documentation that is a part of the public record concerning the issuance of the Bonds.

SECTION 44: Contracts with Financial Advisor. The Board authorized the Board President, the Board Vice President, and/or the Superintendent of Schools, or their designee thereof, to take all actions necessary to execute any necessary financial advisory contracts with RBC Capital Markets, LLC, as the financial advisor to the District (the *Financial Advisor*). The District understands that under applicable federal securities laws and regulations that the District must have a contractual arrangement with its Financial Advisor relating to the sale, issuance, and delivery of the Bonds.

SECTION 45: Delegation Authorization Pursuant to HB 1295. Though such parties may be identified, and the entry into a particular form of contract may be authorized herein, pursuant to the Act, and any other applicable law, the Board, pursuant to the Act and other applicable law, hereby delegates to the Superintendent of Schools or the Assistant Superintendent for Business the authority to independently select the counterparty to any paying agent/registrar, rating agency, bond insurer, securities depository, escrow agent, open market securities bidding agent, verification agent or any other contract that is determined by the Superintendent of Schools, the Assistant Superintendent for Business, the District's Financial Advisor, or the District's Bond Counsel to be necessary or incidental to the issuance of the Bonds as long as each of such contracts has a value of less than the amount referenced in Section 2252.908 of the Texas Government Code (collectively, the *Ancillary Bond Contracts*) and, as necessary, to execute the Ancillary Bond Contracts on behalf and as the act and deed of the District. The Board has not participated in the selection of any of the business entities which are counterparties to the Ancillary Bond Contracts.

SECTION 46: Effective Date. This Order shall be in force and effect from and after its passage on the date shown below.

[The remainder of this page intentionally left blank.]

PASSED AND ADOPTED, this _____ day of _____, 2020.

MCALLEN INDEPENDENT SCHOOL
DISTRICT

President, Board of Trustees

ATTEST:

Secretary, Board of Trustees

(DISTRICT SEAL)

INDEX TO SCHEDULES AND EXHIBITS

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SCHEDULE I

Refunded Obligations

McAllen Independent School District Unlimited Tax Refunding Bonds, Series 2013A, dated May 1, 2013, in the original principal amount of \$64,465,000 and stated to mature on February 15 in each of the years 2024 through 2030, in the aggregate principal amount of \$32,910,000. These obligations will be called for redemption on February 15, 2023.

SCHEDULE II

Approval Certificate

See Tab No. __

EXHIBIT A

Paying Agent/Registrar Agreement

See Tab No. __

EXHIBIT B

Purchase Contract

See Tab No. __

EXHIBIT C

Escrow Agreement

See Tab No. __

EXHIBIT D

Notice of Redemption

See Tab No. __

EXHIBIT E

Description of Annual Financial Information

The following information is referred to in Section 40 of this Order.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the District to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

1. The quantitative financial information and operating data of the District of the general type included in Tables 1 through 10 and 12 through 13 in Appendix A thereof.
2. The District's audited financial statements for the most recently concluded fiscal year or to the extent these audited financial statements are not available, the portions of the unaudited financial statements of the District appended to the Official Statement as Appendix D, but for the most recently concluded fiscal year.

Accounting Principles

The accounting principles referred to in such Section are generally accepted accounting principles for governmental units as prescribed by the Government Accounting Standards Board from time to time.

EXHIBIT F

DTC Letter of Representations

Tab No. __

EXHIBIT G

General Policies and Procedures Concerning Compliance with the Rule

- I. Capitalized terms used in this Exhibit have the meanings ascribed thereto in Sections 9 and 40 of the Order. “Bonds” refers to the Bonds that are the subject of the Order to which this Exhibit is attached.
- II. As a capital markets participant, the District is aware of its continuing disclosure requirements and obligations existing under the Rule prior to February 27, 2019, the effective date of the most recent amendment to the Rule (the *Effective Date*), and has implemented and maintained internal policies, processes, and procedures to ensure compliance therewith. Adherence to these internal policies, processes, and procedures has enabled underwriters in non-exempt negotiated sales and initial purchasers in non-exempt competitive sales to comply with their obligations arising under various MSRB rules and regulations concerning due diligence and findings of suitability, among other matters, regarding the District’s compliance with the Rule.
- III. The District is aware that the Rule was amended as of the Effective Date (the *Rule Amendment*) and has accommodated this amendment by adding subparagraphs (15) and (16) to Section 40 of the Order, which provisions are a part of the Undertaking.
- IV. The District is aware that “participating underwriters” (as such term is defined in the Rule) of the Bonds must make inquiry and reasonably believe that the District is likely to comply with the Undertaking and that the standards for determining compliance have increased over time as a result of, among others, the United States Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation Initiative and regulatory commentary relating to the effectiveness of the Rule Amendment.
- V. The District now establishes the following general policies and procedures (the *Policies and Procedures*) for satisfying its obligations pursuant to the Undertaking, which policies and procedures have been developed based on the District’s informal policies, procedures, and processes utilized prior to the Effective Date for compliance with the District’s obligations under the Rule, the advice from and discussions with the District’s internal senior staff (including staff charged with administering the District’s financial affairs), its municipal or financial advisors, its legal counsel (including Bond Counsel), and its independent accountants, to the extent determined to be necessary or advisable (collectively, the *Compliance Team*):
 - (a) The Chief Financial Officer (the *Compliance Officer*) shall be responsible for satisfying the District’s obligations pursuant to the Undertaking through adherence to these Policies and Procedures;
 - (b) the Compliance Officer shall establish reminder or “tickler” systems to identify and timely report to the MSRB, in the format thereby prescribed from time to time, the District’s information of the type described in Section 40 of the Order;

- (c) the Compliance Officer shall promptly determine the occurrence of any of the events described in Section 40 of the Order;
- (d) the Compliance Officer shall work with external consultants of the District, as and to the extent necessary, to timely prepare and file with the MSRB the annual information of the District and notice of the occurrence of any of the events referenced in Clauses (a) and (b) above, respectively, the foregoing being required to satisfy the terms of the Undertaking;
- (e) the Compliance Officer shall establish a system for identifying and monitoring any Financial Obligations, whether now existing or hereafter entered into by the Issuer, and (upon identification) determining if such Financial Obligation has the potential to materially impact the security or source of repayment of the Bonds;
- (f) upon identification of any Financial Obligation meeting the materiality standard identified in Clause (e) above, the Compliance Officer shall establish a process for identifying and monitoring any District agreement to covenants, events of default, remedies, priority rights, or other similar terms under such Financial Obligation;
- (g) the Compliance Officer shall establish a process for identifying the occurrence of any default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any Financial Obligation, the occurrence of any of which reflect financial difficulties of the District; and
- (h) the Compliance Officer shall annually review these Policies and Procedures with the remainder of the Compliance Team, make any modifications on an internal document retained by the Compliance Officer and available to any “participating underwriter” (as defined in the Rule), if requested, and on the basis of this annual review (to the extent determined to be necessary or desirable), seek additional training for herself or himself, as well as other members of the District’s internal staff identified by the Compliance Officer to assist with the District’s satisfaction of the terms and provisions of the Undertaking.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: *Conrado Alvarado*
Conrado Alvarado (Sep 10, 2020 00:03 CDT)

SUPERVISOR: _____

Approved for presentation to the Board of Education:



221 _____
Superintendent of Schools

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: September 14, 2020

SUBMITTED BY: *Natalia Goza*
Natalia Goza (Sep 9, 2020 15:50 CDT)

SUPERVISOR: _____

Approved for presentation to the Board of Education:



222

Superintendent of Schools