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
1. Student Achievement/Student Focus
2. People Development
3. Facility Priorities
4. Financial Priorities

STRATEGIES
1. Branding
2. Attract/Retain High Quality Staff
3. Engaging Learning Environment
4. Rigorous/World Class Standards to Customize for Every Learner
5. Partnerships with Business/Civic/Education/Organizations
6. Future Ready Students
7. Financial Priorities

A Regular Meeting of the Board of Trustees of the McAllen Independent School District will be held Tuesday, October 13, 2020, beginning at 5:00 PM Auditorium/McAllen High School, 2021 La Vista, McAllen, TX 78501.

Due to health and safety concerns related to COVID-19 coronavirus, this meeting will also be conducted by video conference on the following site www.mcallenisd.org. At least a quorum of the Board will be participating in person at the Auditorium/McAllen High School, 2021 La Vista, McAllen, TX 78501 in accordance with the provisions of Section 555.127 of the Texas Government Code.

Public comments related to this meeting will be handled as follows: Public comments may be made in person subject to social distancing requirements at the Auditorium/McAllen High School, 2021 La Vista, McAllen, TX 78501, by use of the following video conference site: https://www.mcallenisd.org/page/public-comments or by telephone call to the following number 956 618-6094.

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.

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)** Dr. Gonzalez earns Texas Superintendent of the Year award!

Presenter: Dr. J. A. Gonzalez, Superintendent

8. **RECOGNITION(S)**

A) Recognition of Proclamation Declaring October 22 as Dr. J.A. Gonzalez Day in Support of Proclamations by Hidalgo County Commissioner;s Court and the City of McAllen 7
Item Submitted: Norma Zamora-Guerra, Director Community Information

Presenter: Dr. J. A. Gonzalez, Superintendent

B) Recognition of Proclamation Regarding Dyslexia Awareness Month (October 2020) 9
Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

C) Recognition of Governor of Texas Proclamation regarding National Principals Month (October 2020) 11
Item Submitted: Bridgette Vieh, Associate Superintendent Instructional Leadership

Presenter: Dr. J. A. Gonzalez, Superintendent

9. **PROCLAMATION(S)**

A) Approval of Proclamation of National School Lunch Week October 12-16, 2020 13
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

B) Approval of Proclamation Regarding National School Bus Safety Week (October 19-23, 2020) 15
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

C) Approval of Proclamation Regarding National Red Ribbon Campaign Week (October 23-31, 2020) 17

Item Submitted: Arely Benavides, Assistant Superintendent District Operations

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 COVID-19 Safety and Positive Case Protocols 19
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Report Regarding the Monthly Financial and Investment Report for July 2020 20
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 48
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 49
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 Amendment to the Agreement with McAllen Preventative Care Institute through Request for Qualifications No. 2018-013 - Employer Direct Clinical Services 50
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

B) Approval of Interlocal Agreement No. 2021-149 with The University of Texas Rio Grande Valley on behalf of UT Health RGV Clinical Laboratory 81
Item Submitted: Todd Miller, Assistant Superintendent

Presenter: Dr. J. A. Gonzalez, Superintendent

C) Approval of Competitive Sealed Proposall No. 2021-112 Location 1 - Castaneda Elementary School and Location 2 - Navarro Elementary School Fire Alarm Upgrade(s) 89
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

D) Approval of Competitive Sealed Proposal No. 2021-127 Location 1 - Cathey Middle School and Location 2- Jackson Elementary School Fire Alarm Upgrade(s) 160
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

E) Approval of Competitive Sealed Proposal No. 2021-128 Location 1 - Travis Middle School and Location 2- Crockett Elementary School Fire Alarm Upgrade(s). 231
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

F) Approval of Request for Proposal No. 2020-264 Fire and Intrusion Alarm Monitoring Services 301
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

G) Approval of First Amendment to the Contract with Indeco Sales, Inc. through Request for Cooperative Quotes No. 2020-311 Demolition and New Installation of Phenolic Restroom Partitions at Brown Middle School and Alvarez Elementary School through Buyboard Cooperative Contract 383
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

H) Approval of Request for Cooperative Quotes No. 2021-155 for Purchase and Installation of Water Fountains through 2020-002 Texas Association of School Board Buyboard Cooperative. 385
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

I) Approval of Interlocal Cooperative Agreement No. 2021-153 Sourcewell Purchasing Cooperative 386
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business 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)

1. Approval of First Amendment to Agreement No. 2021-068 Communities in Schools of Hidalgo County Inc. 390
Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

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

1. Approval of Request for Proposal No. 2021-002 International Pharmacy 393
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

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

1. Approval of Rejection of Request for Qualifications 2021-046 for Telemedicine Services 476
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Approval of Interlocal Agreement No. 2021-151 with the City of McAllen for the Press Box Renovations 477
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

3. Approval of the Resolution to the Board of Trustees of the McAllen Independent School District Identifying Hazardous Traffic Conditions for the School Year 2020-2021 490
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

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

1. Request for Action Regarding International Bank of Commerce ("IBC") Property Tax Waiver of Penalties and Interest 493
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Approval of the McAllen Independent School District October 6, 2020 Budget Amendment for Fiscal Year Beginning July 1, 2020 and Ending June 30, 2020 501
Item Submitted: Cynthia Medrano Richards, Assistan Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

E) **Board of Trustees Item(s)**

1. Approval of Board of Education Meeting Minutes 505

a) Regular Board Meeting, September 28, 2020 5:00 P.M. 506

15. **SCHEDULE OF FUTURE MEETINGS**

A) Regular Board Meeting - October 26, 2020 - 5:00 P.M. - TBD

B) Regular Board Meeting - November 9, 2020 - 5:00 P.M. - TBD

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 October 9, 2020 at 7:09 P.M.
Natalia Goza
For the Board of Trustees

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Proclamation declaring October 22nd as Dr. J.A. Gonzalez Day in Support of Proclamations by Hidalgo County Commissioner's Court and the City of McAllen

REFERENCE: Goal 2: People Development

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
To proclaim October 22nd as Dr. J.A. Gonzalez Day and to recognize the accomplishments of the McAllen Independent School District Superintendent.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: None Required

LEGAL REVIEW: None Required

BUDGETARY CONSIDERATIONS: None Required

RECOMMENDED BOARD ACTION: That the Board of Trustees approve the Proclamation declaring October 22nd as Dr. J.A. Gonzalez Day.

SUBMITTED BY: Norma Guerra (Oct 9, 2020 17:42 CDT)

SUPERVISOR:

For further information contact:
Name: Norma Zamora-Guerra
Office: Community Information
eMail: norma.z.guerra@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Oct 9, 2020

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District

Whereas, Dr. J.A. Gonzalez, who has served as McAllen ISD's Superintendent of Schools since 2016, was named the Region One Superintendent of the Year, then recognized as one of just five finalists for the top State award, and then named the 2020 Texas Superintendent of the Year by the Texas Association of School Boards on Thursday, October 1, 2020; and

Whereas, the Texas Association of School Boards Selection Committee noted that in McAllen ISD, Dr. Gonzalez is working to make dreams come true for students at every level by taking a hands-on approach to leadership, being inclusive, and providing the right enrichment to students at the right time;

Whereas, state committee members specifically cited the district's close monitoring of performance, every state-recommended learning objective and student progress, which is key to the district's numerous distinctions and its "A" rating;

Whereas, the state committee noted that this appears to be the secret to McAllen ISD's success, allowing the district to provide reteaching and targeted enrichment to students so every child can remain on a trajectory to meeting his or her potential and fulfill his or her dreams; and

Whereas, Dr. Gonzalez is a role model for the entire community, a leader, motivator, and hard worker tirelessly dedicating himself to meeting the needs of our community's children on an academic, social and emotional plane, while simultaneously meeting the challenges of a health crisis head on.

Whereas, October 22nd, was proclaimed as Dr. J.A. Gonzalez Day by the Hidalgo County Commissioner's Court and by the City of McAllen,

Now Therefore, I, Marco Suarez, Member, Board of Trustees of the McAllen Independent School District, do hereby proclaim October 22nd,

"Dr. J.A. Gonzalez Day"

IN WITNESS WHERE OF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 13rd day of October, 2020.

_____
Marco Suarez, Member, Board of Trustees
McAllen Independent School District

Attest:

_____
Tony Forina, Secretary, Board of Trustees
McAllen Independent School District

BOARD RECOGNITION FORM
McALLEN INDEPENDENT SCHOOL DISTRICT

Meeting Date (Recommended): October 13, 2020

Title of Recognition: Recognition of Proclamation Regarding Dyslexia Awareness Month (October 2020)

Person(s) Being Recognized (include names & description i.e student at X High School):
McAllen ISD Dyslexia Teachers

Reason for Recognition:
Dyslexia is one of the most common learning disabilities affecting students. This lifelong disorder can be a detriment to a child's education or an adult's professional development by inhibiting interpretation of spoken and written language. With proper diagnosis, individuals can be taught appropriate, systematic and structured methods of learning that enable them to excel in their school and work environments. The dedication and understanding of family, teachers, and coworkers can greatly help those with dyslexia achieve success. To raise awareness of this learning disability, October has been designated Dyslexia Awareness Month. It is vial to communicate the importance of an early diagnosis and to provide the necessary assistance and guidance to those affected by dyslexia. At this time, I encourage all to learn more about dyslexia. We must also recognize the efforts of parents, teachers and other professionals who assist individuals with dyslexia. Their success helps create a stronger citizen.

Please note any items that will be presented: None.

Photographer Requested: Yes

AV needs: None

Name of Presenter: Salvador Flores
Phone: (956) 661-6882
eMail: salvador.flores@mcallenisd.net

Approved for Recognition: _____
Superintendent Oct 6, 2020

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.

GOVERNOR GREG ABBOTT

Dyslexia, a lifelong disability that impedes a person's ability to interpret spoken and written language, is one of the most common learning disabilities, and the scope of this disorder must continue to be addressed. By doing so, we can help lessen the negative impact dyslexia has on both educational development at a young age and professional advancement later in life.

As we have learned more about dyslexia, it has become clear that patient outcomes are vastly improved by proper and timely diagnosis. When individuals are effectively diagnosed, they can utilize appropriate, systematic, and structured methods of learning that help them succeed as students and career professionals. While an early diagnosis creates a solid foundation for Texans affected by dyslexia, the dedication, patience, and compassion of family members, teachers, and coworkers is also a crucial part of support and success.

The month of October is designated as Dyslexia Awareness Month to help raise awareness of and educate people about the challenges and contributions of Texans affected by dyslexia. As we raise awareness about dyslexia, we must also emphasize how important early diagnosis and access to assistance are for those affected by this disability.

At this time, I encourage all Texans to expand their knowledge of dyslexia and recognize the invaluable support provided by parents, teachers, and other professionals to those affected by this learning disability. Together, we can help ensure a better and brighter future for Texans with dyslexia who have and will continue to contribute so much to the Lone Star State.

Therefore, I, Greg Abbott, Governor of Texas, do hereby proclaim October 2020, to be

Dyslexia Awareness Month

in Texas, and urge the appropriate recognition whereof.

In official recognition whereof,
I hereby affix my signature this the
21st day of September, 2020.

10 Greg Abbott
Governor of Texas

BOARD RECOGNITION FORM
McALLEN INDEPENDENT SCHOOL DISTRICT

Meeting Date (Recommended): 10/13/2020

Title of Recognition: Recognition of Governor of Texas Proclamation Regarding Principals Month (October 2020)

Person(s) Being Recognized (include names & description i.e student at X High School):
McAllen ISD 2020-2021 Principals:

High Schools:
Albert Canales, McAllen; Pedro Alvarez Jr., McAllen Memorial; Monica Kaufmann, James "Nikki" Rowe; Jeanette Nino, Lamar Academy; Miguel Carmona, Achieve Early College

Middle Schools:
Fernando Gutierrez, Instruction & Guidance Center; Alfredo Gutierrez, Dorthea Brown; Melvin Benford, Dr. Rodney D. Cathey; Samuel Cazares, Alonzo De Leon; Laura Williams, Michael E. Fossum; Brian McClenny, Homer J. Morris; Efrain Amaya, William B. Travis

Elementary:
Juan Montes, Francisca Alvarez; Leticia Infante, James Bonham; Jessica P. Rodriguez, Dr. Carlos Castaneda; Carlos Mora, Jose De Escandon; Teresa Trdla, Victor Fields; Nancy Valenzuela, Reynaldo G. Garza; Christina Hernandez, Leonelo H. Gonzalez; Sandra Salinas, Lucile McKee Hendricks; Debra Loya Thomas, Sam Houston; Elizabeth Gonzalez, Christa McAuliffe; Christian Quintanilla, Ben Milam; Veronica Delgado, Dr. Pablo Perez; Clarissa Partida, Sam Rayburn; Albert G. Irlas, Theodore Roosevelt; Cynthia Rodriguez, Blanca E. Sanchez; Juan P. Nevarez, Juan Seguin; Sonia S. Casas, Thigpen-Zavala; Dr. Kristine Garza, Woodrow Wilson

Reason for Recognition: Governor of Texas Proclaiming Principals Month (October 2020)

Please note any items that will be presented: None

Photographer Requested: No

AV needs:

Name of Presenter: Bridgette Vieh
Phone: 956-618-6053
eMail: bridgette.vieh@mcallenisd.net

Approved for Recognition: _____
Superintendent Oct 8, 2020

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.

STATE OF TEXAS
OFFICE OF THE GOVERNOR

Principals are entrusted with our most precious and valuable resource—the students of this great state. Children are our promise for the future, and receiving a rigorous and well-rounded education is critical to their development and, in turn, the development of Texas. A principal's vision and tireless work ethic can drastically improve the educational experience for both students and teachers.

Principals fulfill many roles, both big and small, in our schools and beyond. These educators set the academic tone for their schools by working collaboratively with our invaluable teachers to build high academic standards, set performance goals, and utilize the best practices for achieving those goals. Principals also support the local community, students, and parents and promote a healthy school environment as leaders, communicators, disciplinarians, budget analysts, and makers of policy mandates and initiatives. A principal's responsibility takes many shapes and forms, and their dedicated work is vital to ensure the success of their students.

During the month of October, we recognize the important roles principals assume in helping to ensure that every child has access to a high-quality education in a safe and supportive environment. This year, as we face new challenges presented by the novel coronavirus (COVID-19) pandemic, the leadership of our state's principals in our schools is more important than ever.

At this time, I encourage all Texans to learn more about the many contributions and accomplishments of elementary, middle, and high school principals across our state. As our principals accomplish their goals for education, the future of the Lone Star State is made brighter.

Therefore, I, Greg Abbott, Governor of Texas, do hereby proclaim October 2020 to be

Principals Month

in Texas, and urge the appropriate recognition whereof.

In official recognition whereof,
I hereby affix my signature this the
1st day of October, 2020.

Governor of Texas

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Proclamation of National School Lunch Week October 12-16, 2020

REFERENCE: Goal 1: Student Achievement/Student Focus; Strategy 4: Rigorous/World Class Standards Customized for Every Learner

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

National School Lunch Week is recognized annually across the country to recognize school nutrition professionals that provide nutritious and delicious meals daily that enhance student learning and student achievement.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Cafeteria managers, production supervisor, and specialists have been essential in ensuring meals are provided daily to hungry children in our community. They have fearlessly and consistently provided exceptional customer service and provided normalcy and a connection to the school environment to children during school closures and as we phase in back to schools. Graciela Rodriguez, Production Supervisor; Martha Pena, Operations Specialist; Maricela Meza, Budget and Cost Specialist; Dalia Pena, Assistant Director; Alexandra Molina, Director.

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Proclamation of National School Lunch Week October 12-16, 2020.

SUBMITTED BY: Alexandra Molina

SUPERVISOR: Arely Benavides (Oct 8, 2020 13:58 CDT)

For further information contact:
Name: Alexandra Molina
Office: 956.632.3226
eMail: alexandra.molina@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

McALLEN
INDEPENDENT SCHOOL DISTRICT

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District

Whereas, The National School Lunch Program has served our nation for more than 75 years and enables more than 21,000 McAllen ISD students daily to have access to delicious, nutritious, and safe meals at school and has allowed us to feed our community during the pandemic seamlessly;

Whereas, to provide more fruits, vegetables, and other nutritious food for school meals, McAllen ISD participates in the USDA Farm to School program that enables the district to partner with local farmers to provide quality foods on school menus, to increase markets for local farms, and to teach young people about the source of their food; and

Whereas, we recognize the talent and dedication of all the food service professionals, educators, program administrators, and parents who help ensure that our students have the healthy food necessary to grow and succeed;

Now Therefore, I, Sam Saldivar, Jr., Vice-President, Board of Trustees of the McAllen Independent School District, do hereby proclaim the day of October 12-16th, 2020 as

"National School Lunch Week"

I call upon all residents to join the dedicated individuals who administer the National School Lunch Program in appropriate activities that support the health and well-being of our children and to become aware of their own nutrition habits, in hope of achieving a more healthful citizenry for today and the future.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 13th day of October 2020.

_____
Sam Saldivar, Jr., Vice-President, Board of Trustees
McAllen Independent School District

Attest:

_____
Tony Forina, Secretary, Board of Trustees
McAllen Independent School District

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Proclamation Regarding National School Bus Safety Week (October 19-23, 2020)

REFERENCE: Goal 1: Student Achievement/Student Focus; Strategy 4: Rigorous/World Class Standards Customized for Every Learner

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

To proclaim October 19-23, 2020 as National School Bus Safety Week and to recognize the efforts of the MISD Transportation Department.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Consideration is made in accordance with the National Association for Pupil Transportation.

LEGAL REVIEW:

The Proclamation has been reviewed and approved by the district's counsel.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

That the Board of Trustees Approve the Proclamation Regarding National School Bus Safety Week (October 19-23, 2020).

SUBMITTED BY: Erica Flores (Oct 8, 2020 16:26 CDT)

SUPERVISOR: Arely Benavides (Oct 8, 2020 18:03 CDT)

For further information contact:
Name: Erica Flores, Director
Office: 956-632-3211
eMail: erica.flores@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District

Whereas, approximately 480,000 yellow school buses carry 25 million children to and from school every weekday; These buses comprise the largest mass transportation fleet in the country; and

Whereas, school buses meet higher construction, equipment, and inspection standards than any other vehicle, making them eight times safer than traveling in a passenger vehicle, and school bus drivers meet higher qualification, training, and testing standards than any other drivers; and

Whereas, School Bus Safety Week, which is sponsored by the National Highway Traffic Safety Administration, was created in 1966 to remind all students of the best ways to get on and off the bus and also recognizes the hard work and dedication of school transportation personnel; and

Whereas, McAllen ISD's bus drivers logged approximately 750,000 miles last year, enough to circle the earth more than 30 times;

Now Therefore, I, Sam Saldivar, Jr., Vice President, Board of Trustees of the McAllen Independent School District do hereby proclaim the week of October 19-23, 2020 as

"National School Bus Safety Week"

I call upon all residents to join the dedicated individuals who administer the National School Bus Program in appropriate activities that support the safe transportation and well-being of our children.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 13th day of October 2020.

_____
Sam Saldivar, Jr., Vice President, Board of Trustees
McAllen Independent School District

Attest:

_____
Tony Forina, Secretary, Board of Trustees
McAllen Independent School District

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Proclamation Regarding National Red Ribbon Campaign Week (October 23-31, 2020)

REFERENCE: Goal 1: Student Achievement/Student Focus; Strategy 4: Rigorous/World Class Standards Customized for Every Learner

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

National Red Ribbon Campaign Week is an awareness campaign observed annually in October in the United Stated. The campaign promotes a unified way for communities to take stand against alcohol, tobacco and other drug and violence prevention. Red Ribbon Week began after the kidnapping, torture and murder of DEA Agent Enrique "Kiki" Camarena in 1985.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

During Red Ribbon week campuses will host an array of activities (virtual) to educate students, families and communities on the destructive effects of drugs and encourages the adoption of healthy lifestyle choices. Students and staff will demonstrate their commitment to a healthy, drug-free lifestyle by wearing and displaying red ribbons during this campaign.

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Proclamation Regarding National Red Ribbon Campaign Week (October 23-31, 2020).

SUBMITTED BY: Jose Silva Jr (Oct 6, 2020 12:40 CDT)

SUPERVISOR: Cris Esquivel Jr. (Oct 6, 2020 13:25 CDT)

For further information contact:
Name: Jose Silva, Captain
Office: (956) 928-8990
eMail: jose.silva@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District

Whereas, the National Red Ribbon Campaign offers citizens the opportunity to demonstrate their commitment to drug-free lifestyles which includes no use of illegal drugs or abuse of legal substances; and

Whereas, youth and adults will demonstrate their commitment to healthy, drug-free lifestyles by wearing and displaying red ribbons during this campaign; and

Whereas, the community of McAllen Independent School District further commits its resources to ensure the success of the Red Ribbon Campaign;

Now Therefore, I, Debbie Crane Aliseda, Member for the Board of Trustees of the McAllen Independent School District, do hereby proclaim the week of October 23-31, 2020 as

"Red Ribbon Week"

I call upon all residents to join the dedicated individuals who promote safe and drug free activities that support the health and well-being of our children in hope of achieving a healthier, drug-free future for our children.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 13th day of October, 2020.

_____
Debbie Crane Aliseda, Member, Board of Trustees
McAllen Independent School District

Attest:

_____
Tony Forina, Secretary, Board of Trustees
McAllen Independent School District

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Report Regarding COVID-19 Safety and Positive Case Protocols

REFERENCE: Goal 2: People Development; Strategy 2: Attract/Retain High Quality Staff

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
This report is to review and discuss the district's COVID-19 safety and positive case protocols since March 2020 to present day. Additionally, we want to bring the Board of Trustees up to date on the districts' ongoing and pending actions to address both COVID-related concerns and what we are doing preventively to keep our children and staff safe and healthy.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
District team members remain in close coordination and communications with Hidalgo County Health and Human Services representatives to stay informed of the current status of COVID-19 within our County and community.

LEGAL REVIEW:

None

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

This Report Regarding COVID-19 Safety and Positive Case Protocols is submitted to the Board for informational purposes only and requires no Board action.

SUBMITTED BY: _____ **SUPERVISOR:** Todd Miller

For further information contact:
Name: Todd Miller
Office: 956-618-6005
eMail:todd.miller@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Oct 9, 2020

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Report Regarding the Monthly Financial and Investment Report for July 2020

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

CDA Local requires the submission of an investment report at least quarterly. In addition, the District has a Board directive to supply monthly financial information.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The monthly financial reflects the following:

-General Fund Comparison of Budget to Revenues, Expenditures and Encumbrances

-Monthly Investment Report

LEGAL REVIEW:

Not required.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

The Report Regarding the Monthly Financial and Investment Report for July 2020 is submitted to the Board for information purposes only and requires no Board action.

SUBMITTED BY: Adel Felix **SUPERVISOR:** Cynthia Medrano-Richards

For further information contact:
Name: Adel Felix, CPA, CFE
Office: (956) 618-6016
Email: adel.felix@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

COMPARISON OF BUDGET TO REVENUES, EXPENDITURES AND ENCUMBRANCES
FOR THE MONTH OF JULY 31, 2020

	A APPROVED BUDGET 2019-20 07/31/19	B YTD ACTUAL 07/01/19 TO 07/31/19	C APPROVED BUDGET 2020-21 07/31/20	D YTD ACTUAL 07/01/20 TO 07/31/20	E DIFFERENCE C - D	F OUTSTANDING ENCUMBRANCES 08/01/20 TO 06/30/21	G YTD REVENUES, EXPENSES AND ENCUMBRANCES D + F	H BUDGET LESS EXPENSES AND ENCUMBRANCES C - G
REVENUES:								
LOCAL AND INTERMEDIATE SOURCES	$4,898,422	$617,022	$4,386,299	$260,977	$4,125,322		$260,977	$4,125,322
PROPERTY TAXES	84,808,742	414,640	79,823,682	349,607	79,474,075		349,607	79,474,075
STATE PROGRAM REVENUES	123,278,826	870,591	137,774,797	986,747	136,788,050		986,747	136,788,050
FEDERAL PROGRAM REVENUES	19,752,435	266	21,131,995	406,685	20,725,310		406,685	20,725,310
OTHER RESOURCES/NON-OPERATING REVENUES	100,600	600	910,055	805,936	104,119		805,936	104,119
SUB TOTAL	$232,839,025	$1,903,118	$244,026,828	$2,809,953	$241,216,875		$2,809,953	$241,216,875
EXPENDITURES:								
11 INSTRUCTION	$120,450,828	$732,792	$126,269,950	$838,726	$125,431,224	$105,810,540	$106,649,266	$19,620,684
12 INST. RES. & MEDIA SERVICES	3,568,381	15,696	3,591,042	18,240	3,572,802	3,066,909	3,085,149	505,893
13 CURRICULUM DEV. & INST. STAFF DEV.	3,917,270	177,206	4,664,324	232,132	4,432,192	2,763,954	2,996,086	1,668,238
21 INST. LEADERSHIP	2,879,037	124,545	3,272,076	143,825	3,128,251	2,182,588	2,326,413	945,663
23 SCHOOL LEADERSHIP	13,032,258	209,384	13,699,344	516,911	13,182,433	11,689,813	12,206,724	1,492,620
31 GUID., COUNSELING & EVAL. SER.	9,656,731	92,615	10,079,062	240,296	9,838,766	8,191,618	8,431,915	1,647,147
32 SOCIAL WORK SERVICES	1,444,167	27,127	1,879,013	52,603	1,826,410	1,661,135	1,713,738	165,275
33 HEALTH SERVICES	3,037,460	22,442	3,083,099	71,455	3,011,644	2,554,158	2,625,613	457,486
34 STUDENT (PUPIL) TRANS.	4,643,835	164,853	4,026,730	58,414	3,968,316	2,810,373	2,868,787	1,157,943
35 FOOD SERVICES	16,917,322	149,164	17,566,135	547,132	17,019,003	9,206,387	9,753,519	7,812,616
36 CURRICULAR/EXTRACURRICULAR ACT.	9,950,107	121,209	10,080,519	111,342	9,969,177	4,700,335	4,811,677	5,268,842
41 GENERAL ADMINISTRATION	7,476,079	512,666	8,014,818	614,091	7,400,727	5,350,253	5,964,344	2,050,474
51 PLANT MAINT. & OPERATIONS	20,155,587	1,697,041	19,940,637	1,254,504	18,686,133	9,834,009	11,088,512	8,852,125
52 SECURITY AND MONITORING SERV.	4,179,505	236,066	4,387,069	272,409	4,114,660	3,401,456	3,673,865	713,204
53 DATA PROCESSING SERVICES	4,733,036	140,918	4,902,220	309,381	4,592,839	2,908,541	3,217,923	1,684,297
61 COMMUNITY SERVICES	40,117	156	35,975	145	35,830	36,638	36,783	(808)
71 DEBT SERVICE	2,244,764	0	7,073,589	269,102	6,804,487	0	269,102	6,804,487
81 FAC. ACQUISITION & CONST.	25,000	0	0	-100,994	100,994	506,189	405,196	(405,196)
95 PMT. TO JUV. JUSTICE ALT. ED. PRG.	40,000	0	40,000	0	40,000	0	0	40,000
99 OTHER INTERGOVERNMENTAL CHARGES	839,000	204,305	891,975	219,720	672,255	665,158	884,878	7,097
00 OTHER USES/NON-OPERATING EXPENSES	6,297,112	0	85,330	$0	85,330	0	0	85,330
SUB TOTAL	$235,527,596	$4,628,187	$243,582,907	$5,669,434	$237,913,473	$177,340,055	$183,009,489	$60,573,418
REVENUES OVER (UNDER) EXPENDITURES		($2,725,069)		($2,859,481)				
PRELIMINARY BEGINNING FUND BALANCE		98,225,502		98,283,927				
PRELIMINARY ENDING FUND BALANCE		$95,500,433		$95,424,446				
PRELIMINARY OPTIMUM FUND BALANCE FOR UNFORESEEN EVENTS		$83,414,639		$84,895,186				

McALLEN INDEPENDENT SCHOOL DISTRICT

Monthly Investment Report

July 31, 2020

PATTERSON & ASSOCIATES

P&A

INVESTMENT PROFESSIONALS

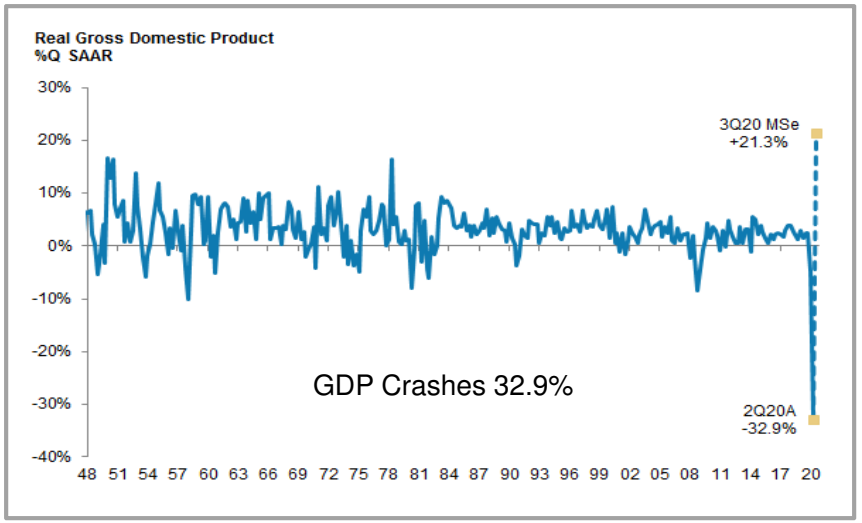
The Struggle Continues

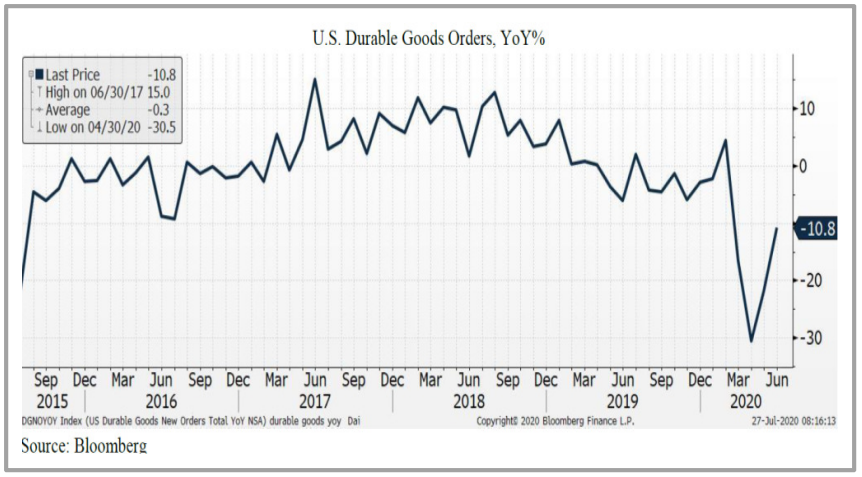
There has been a lack of significant economic movement in the month as the economy started to re-open, but the re-opening created a resurgence of the Covid virus. Some feeble spurts of market and economic growth appear each time we re-open the economy but then we slow again. This will undoubtedly continue as we struggle to return to some new normalcy and fits and starts take a bumpy and complex road.

A dramatic drop in 2Q GDP (32.9%) clearly shows the slow level of economic activity, as well as the level of stimulus pouring into the economy – in the US and around the world. The IMF has noted that the richest countries worldwide will spend ~17% of their GDP by year end.

As expected the Federal Reserve, at its July meeting, opted to keep its policy unchanged, pledging to keep overnight rates at zero through 2021. The Fed had acted quickly and decisively during the last five months, deploying all the normal tools at its disposal to aide the economy. Now, rather than immediately expanding its tool kit, the Committee seems to be giving a subtle nod (or push?) to Congress to act and bridge the gap for businesses and individuals. The Fed will continue with its liquidity and lending programs but may also be contemplating new ideas, which could be discussed further in Sept (the next FOMC meeting) and possibly floated to the market later this fall at Jackson Hole.

Congress goes on vacation in August (of course) and both parties have stimulus goals on the table. Remember that the May package was $3.7T and a new package when completed could be higher still. This will require the printing presses to continue to churn. The parties appear to agree on the direct stimulus to families, but are far apart on unemployment benefits. Benefits are of course intended to provide financial support, but benefits that match or exceed one's previous earnings can actually create an incentive to remain unemployed particularly in the service sector. Then reconnecting with workers proves difficult. Officials don't want to make it more difficult for businesses to reopen without a willing and able labor pool.





Source: Bloomberg

Monetary and Fiscal Efforts

The market volatility, which can be seen so clearly in the equity markets – and basis point by basis point in fixed income markets - is a daily reminder of the fluctuating data releases as well as the pace and anticipation of the stimulus talks.

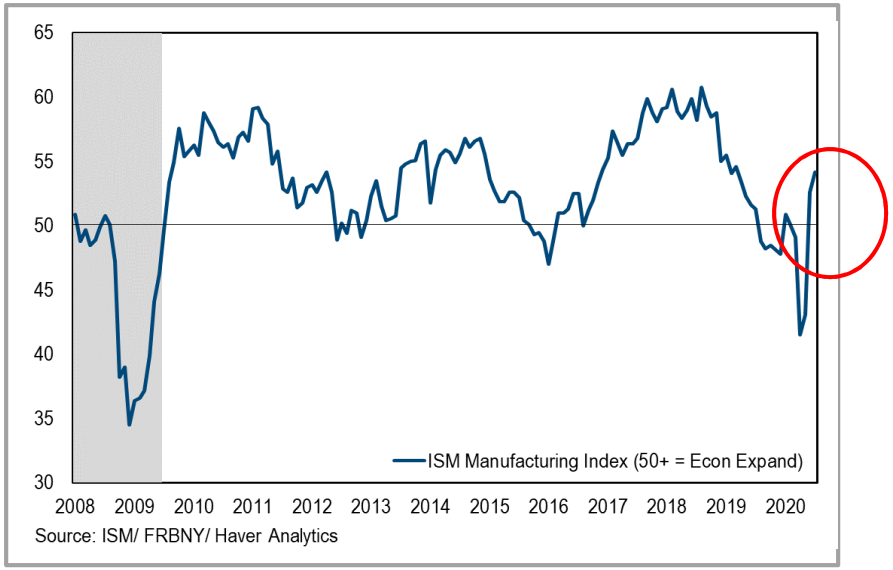
International data, as well as that from the US, did point to weak growth throughout the month with the greatest optimism coming from housing, durable goods, payrolls and especially manufacturing. Manufacturers will only produce if they see some longer term use of their products. Within the recent readings, we have seen a rise in the backlog of orders, employment increases and a surge in new orders – the highest jump since September 2018. The ISM manufacturing index, which is the purchasing managers view of future new orders, has risen strongly in the past two months. Even China's comparable (Caxin) manufacturing index rose last month marking the third consecutive month of expansion and their highest reading since 2011!

The housing activity is clearly a partial reflection of the extremely low mortgage rates available to those with savings to commit. Existing home sales had a record monthly gain and are expected to continue on those low mortgage rates. This is a two-sided benefit however.

As we have noted many times, Americans are not savers compared to many populations. The savings oriented baby-boomers are being replaced by those more interested in immediate gratification. This quarter US spending jumped substantially (with record jumps in May and June), this while simultaneously personal income fell in both months. Consumption is down slightly and consumers do not see the reason to wait because inflation is no where to be seen. With spending outpacing income, the savings rate declined from 24% to 19% this month – just as people should be learning that personal reserves can be critical in dangerous times.

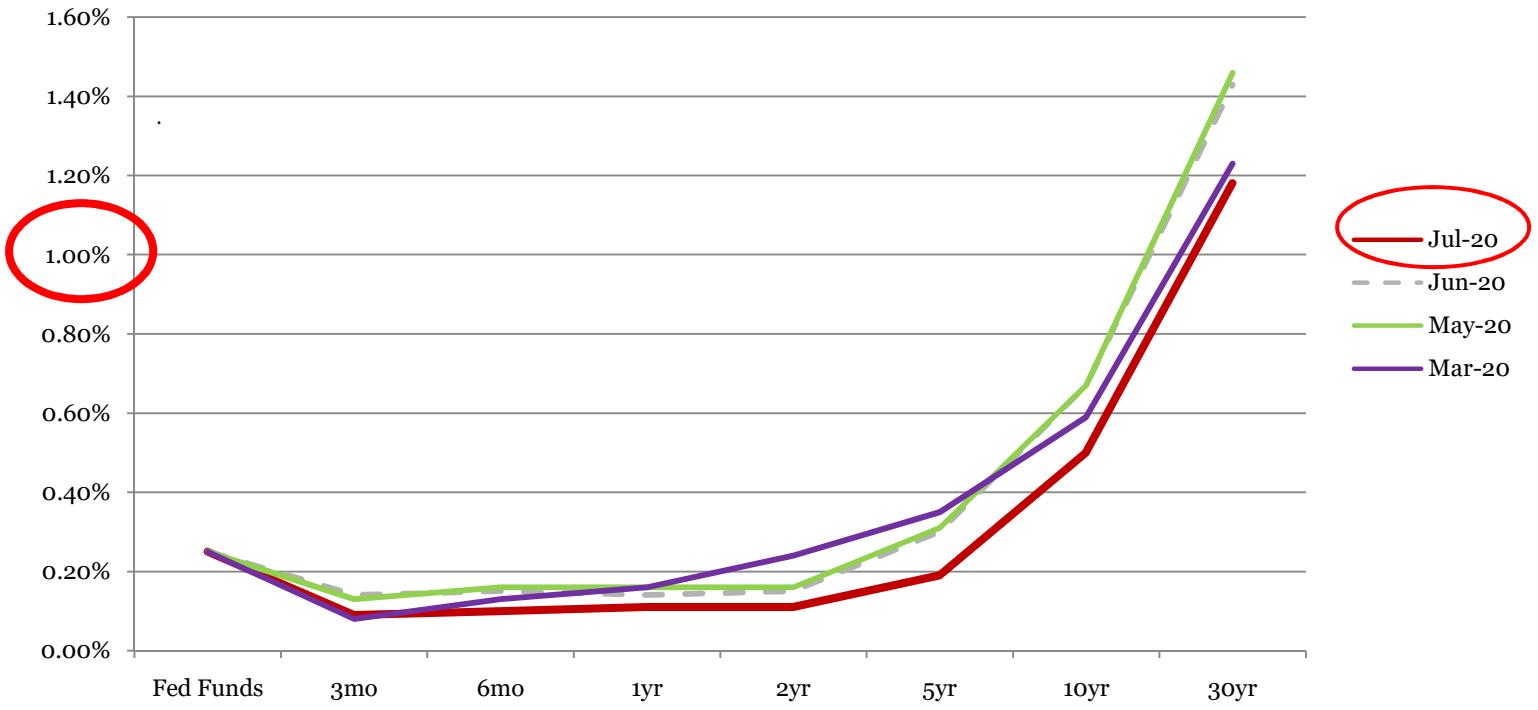
Inflation will not be arriving any time soon with the flood of money being created. Core CPI came in slightly higher this month with some travel related recovery but so far the stable component – rent – has had a notable decline. Good for consumers but not really good for the economy.





A Dismal Change in the Y Axis

- The graph below shows the ugly truth of the yield curve as it also fights the virus. Changes in short rates has to be measured in basis points.
- Fed actions and market fears around the world have caused Treasury and agency rates to remain at the lower (dismal) levels seen for the last five months. The Fed has stated its intention to stay at 0.00% Fed Funds through 2021.
- Fear increases the demand for safe havens and the safest are the U.S. Treasury and the USD dollar. The purchasing of short-term securities to wait out the virus, has driven prices up and rates down.
- The 2 year now yields 0.11% and the 5-year and 10-year notes in real terms are negative in yield (-1.24% and -1.02% respectively). Looking back on 2008-2010 as possible guide posts, the Treasury extends its maturities (from Bills) in the short term inside the 2-year, may be zero bound for a long time. Adding the jaw-dropping level of direct stimulus this time and the level of debt accumulating, it will be awhile before rates rise.



End of Month Rates - Full Yield Curve – Fed Funds to 30yr

McAllen Independent School District
Monthly Investment Report
July 1, 2020 – July 31, 2020

Portfolio Summary Management Report

This report and investment portfolio of the District is in compliance with the District investment strategy as expressed in the District's investment policy and relevant provisions of the Government Code, Chapter 2256, the Public Funds Investment Act.

Portfolio as of 06/30/20:		**Portfolio as of 07/31/20:**	
Beginning Book Value	$ 127,822,678	Ending Book Value	$ 126,970,188
Beginning Market Value	$ 127,892,659	Ending Market Value	$ 127,038,475
		Unrealized Gain/Loss	$ 68,287
WAM at Beginning Period Date[1]	394 days	WAM at Ending Period Date[1]	50 days
(Decrease in market value is due to seasonal cash outflows)		Change in Market Value[2]	$ (854,184)

Average Yield to Maturity for period **0.509%**
Average Yield 180-Day Treasury Bill for period **0.140%**

Cynthia Medrano-Richards

Cynthia Medrano-Richards, Asst. Superintendent for Bus. Operations
McAllen ISD

Iris Luna, Director of Accounting
McAllen ISD

Dyanira Diaz
Dyanira Diaz (Oct 6, 2020 17:13 CDT)

Dyanira Diaz, Coordinator for Accounting
McAllen ISD

Adelita Felix, CFO
McAllen ISD

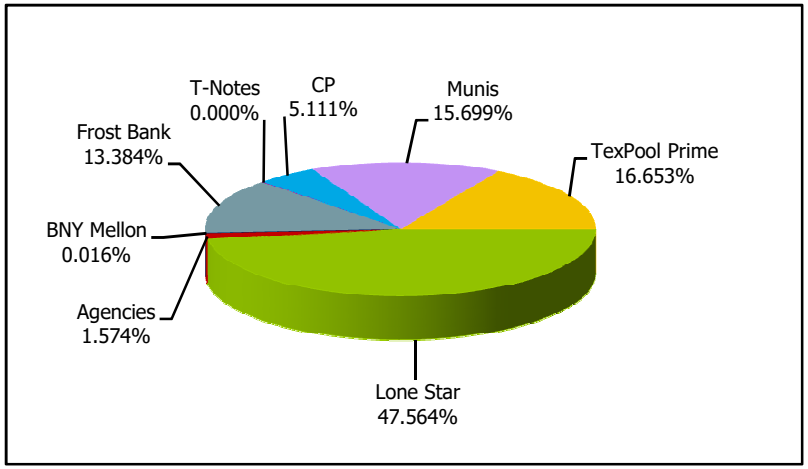
1 WAM – weighted average maturity

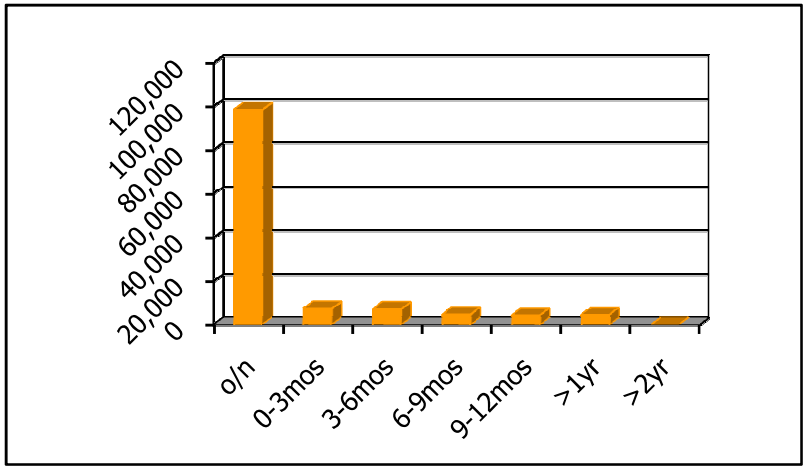
2 "Change in Market Value" is required data, but will primarily reflect the receipt and expenditure of the District's funds from month to month. *Patterson & Associates* has assisted in the preparation of this consolidated investment report, with additional input provided by McAllen ISD.

Your Portfolio

As of July 31, 2020

- P&A constantly reviews your portfolio for optimal asset allocation and a controlled average maturity because a diversified portfolio can better adjust to volatile market conditions. These are unusual times and where extensions can be made it is important to make them for any value in the markets.
- The graphs below show asset allocations by market sector and by maturity in your portfolio. Liquidity will not be attractive but as the curve flattens it also is sometimes the only sector available as year end expenditures loom. Our expectation is of continuing low rates but we will attempt to find value in all authorized sectors to capture yield available.
- Hopefully Fed actions will return us to some normalcy and a vaccine will be found This is what we are watching for and acting on.
- The non-cash portion of your portfolio is yielding 1.43%.





PATTERSON & ASSOCIATES

INVESTMENT PROFESSIONALS

McAllen ISD
Portfolio Management
Portfolio Summary
July 31, 2020

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
-

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 365 Equiv.
BNY Mellon	19,691.52	19,691.52	19,691.52	0.02	1	1	0.000
Frost Bank	16,994,300.44	16,994,300.44	16,994,300.44	13.38	1	1	0.010
Municipal Bonds Actual	5,520,000.00	5,534,131.20	5,524,406.16	4.35	157	26	2.801
Commercial Paper Disc. -Amortizing	6,500,000.00	6,488,790.00	6,488,790.00	5.11	180	122	0.899
Federal Agency Coupon Securities	2,000,000.00	1,998,820.62	1,998,529.41	1.57	727	719	0.258
Municipal Bonds	14,193,000.00	14,466,883.91	14,408,613.47	11.35	403	271	1.294
Texpool/Texpool Prime	21,143,898.52	21,143,898.52	21,143,898.52	16.65	1	1	0.313
Lone Star	60,391,958.95	60,391,958.95	60,391,958.95	47.56	1	1	0.287
Investments	**126,762,849.43**	**127,038,475.16**	**126,970,188.47**	**100.00%**	**74**	**50**	**0.509**
Cash and Accrued Interest							
Accrued Interest at Purchase		129,158.55	129,158.55				
Subtotal		129,158.55	129,158.55				
Total Cash and Investments	**126,762,849.43**	**127,167,633.71**	**127,099,347.02**		**74**	**50**	**0.509**

Total Earnings	July 31 Month Ending	Fiscal Year To Date
Current Year	56,439.07	56,439.07

The following reports are submitted in accordance with the Public Funds Investment Act (Texas Gov't Code 2256). The reports also offer supplemental information not required by the Act in order to fully inform the governing body of McAllen ISD of the position and activity within the District's portfolio of investment. The reports include a management summary overview, a detailed inventory report for the end of the period, a transaction report, as well as graphic representations of the portfolio to provide full disclosure to the governing body.

Oct 6, 2020

Adelita Felix, Chief Financial Officer

PATTERSON & ASSOCIATES
INVESTMENT PROFESSIONALS

McAllen ISD
Summary by Type
July 31, 2020
Grouped by Fund

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
-

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Activity Fund						
Frost Bank	1	1,630,432.79	1,630,432.79	1.28	0.010	1
Subtotal	**1**	**1,630,432.79**	**1,630,432.79**	**1.28**	**0.010**	**1**
Fund: Clearing Fund						
Frost Bank	1	4,235,242.20	4,235,242.20	3.34	0.010	1
Subtotal	**1**	**4,235,242.20**	**4,235,242.20**	**3.34**	**0.010**	**1**
Fund: Capital Projects Fund						
Municipal Bonds	2	5,728,000.00	5,820,093.50	4.58	1.156	291
Frost Bank	2	974,962.36	974,962.36	0.77	0.010	1
Lone Star	4	22,405,793.68	22,405,793.68	17.65	0.260	1
Subtotal	**8**	**29,108,756.04**	**29,200,849.54**	**23.00**	**0.430**	**59**
Fund: Debt Service Fund						
Frost Bank	1	7,649.36	7,649.36	0.01	0.010	1
Lone Star	2	1,833,707.48	1,833,707.48	1.44	0.263	1
Subtotal	**3**	**1,841,356.84**	**1,841,356.84**	**1.45**	**0.262**	**1**
Fund: General Fund						
Commercial Paper Disc. -Amortizing	2	4,000,000.00	3,994,523.33	3.15	1.155	90
Frost Bank	1	9,135,053.56	9,135,053.56	7.19	0.010	1
Lone Star	3	27,640,944.42	27,640,944.42	21.77	0.320	1
Texpool/Texpool Prime	2	21,143,898.52	21,143,898.52	16.65	0.313	1
Municipal Bonds Actual	1	4,000,000.00	4,003,192.87	3.15	2.801	26
Municipal Bonds	2	4,670,000.00	4,759,476.42	3.75	1.246	184
Subtotal	**11**	**70,589,896.50**	**70,677,089.12**	**55.66**	**0.528**	**20**
Fund: Plan 457 Fund						
Frost Bank	1	23,869.92	23,869.92	0.02	0.010	1
Subtotal	**1**	**23,869.92**	**23,869.92**	**0.02**	**0.010**	**1**

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Proprietary Fund						
Frost Bank	1	987,090.25	987,090.25	0.78	0.010	1
Lone Star	2	8,511,513.37	8,511,513.37	6.70	0.259	1
Subtotal	**3**	**9,498,603.62**	**9,498,603.62**	**7.48**	**0.233**	**1**
Fund: QSCB - Reserve Fund						
Commercial Paper Disc. -Amortizing	1	2,500,000.00	2,494,266.67	1.96	0.488	172
BNY Mellon	1	19,691.52	19,691.52	0.02	0.000	1
Federal Agency Coupon Securities	1	2,000,000.00	1,998,529.41	1.57	0.258	719
Municipal Bonds Actual	1	1,520,000.00	1,521,213.29	1.20	2.801	26
Municipal Bonds	2	3,795,000.00	3,829,043.55	3.02	1.565	348
Subtotal	**6**	**9,834,691.52**	**9,862,744.44**	**7.77**	**1.215**	**328**
Fund: QSCB - Debt Service						
BNY Mellon	1	0.00	0.00	0.00	0.000	0
Subtotal	**1**	**0.00**	**0.00**	**0.00**	**0.000**	**0**
Total and Average	**35**	**126,762,849.43**	**126,970,188.47**	**100.00**	**0.509**	**50**

PATTERSON & ASSOCIATES
INVESTMENT PROFESSIONALS

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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McAllen ISD
Fund ACT - Activity Fund
Investments by Fund
July 31, 2020

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999915	10020	Frost Bank Public Checking	07/01/2019	1,630,432.79	1,630,432.79	1,630,432.79	0.010	0.009	0.010	1
		Subtotal and Average		**1,630,432.79**	**1,630,432.79**	**1,630,432.79**		**0.010**	**0.010**	**1**
		Total Investments and Average		**1,630,432.79**	**1,630,432.79**	**1,630,432.79**		**0.010**	**0.010**	**1**

Fund CLEAR - Clearing Fund
Investments by Fund
July 31, 2020

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999914	10019	Frost Bank Public Checking	07/01/2019	4,235,242.20	4,235,242.20	4,235,242.20	0.010	0.009	0.010	1
		Subtotal and Average		**4,235,242.20**	**4,235,242.20**	**4,235,242.20**		**0.010**	**0.010**	**1**
		Total Investments and Average		**4,235,242.20**	**4,235,242.20**	**4,235,242.20**		**0.010**	**0.010**	**1**

Fund CP - Capital Projects Fund
Investments by Fund
July 31, 2020

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
Frost Bank											
999922	10103	Frost Bank Public Checking	12/18/2019	460,920.92	460,920.92	460,920.92	0.010	0.009	0.010		1
SYS10109	10109	Frost Bank Public Checking	02/11/2020	514,041.44	514,041.44	514,041.44	0.010	0.009	0.010		1
		Subtotal and Average		**974,962.36**	**974,962.36**	**974,962.36**		**0.010**	**0.010**		**1**
Municipal Bonds											
114727VW7	10118	Broome County NY	04/30/2020	3,430,591.25	3,418,000.00	3,435,841.96	1.750	1.233	1.250	04/30/2021	272
95639PBF9	10116	West Virginia State Eco Dev	04/28/2020	2,389,502.25	2,310,000.00	2,400,297.90	5.000	1.006	1.020	06/15/2021	318
		Subtotal and Average		**5,820,093.50**	**5,728,000.00**	**5,836,139.86**		**1.140**	**1.156**		**290**
Lone Star											
108906G	10101	Lone Star Corporate Overnight	12/18/2019	1,496,598.09	1,496,598.09	1,496,598.09	0.370	0.364	0.370		1
108906I	10108	Lone Star Corporate Overnight	02/21/2020	9,709,283.51	9,709,283.51	9,709,283.51	0.370	0.364	0.370		1
108906H	10102	Lone Star Government ON	12/18/2019	1,495,648.51	1,495,648.51	1,495,648.51	0.150	0.147	0.150		1
108906J	10113	Lone Star Government ON	03/12/2020	9,704,263.57	9,704,263.57	9,704,263.57	0.150	0.147	0.150		1
		Subtotal and Average		**22,405,793.68**	**22,405,793.68**	**22,405,793.68**		**0.256**	**0.260**		**1**
		Total Investments and Average		**29,200,849.54**	**29,108,756.04**	**29,216,895.90**		**0.424**	**0.430**		**58**

Fund DS - Debt Service Fund
Investments by Fund
July 31, 2020

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999918	10023	Frost Bank Public Checking	07/01/2019	7,649.36	7,649.36	7,649.36	0.010	0.009	0.010	1
		Subtotal and Average		**7,649.36**	**7,649.36**	**7,649.36**		**0.010**	**0.010**	**1**
Lone Star										
108906B	10032	Lone Star Corporate Overnight	10/22/2015	940,763.94	940,763.94	940,763.94	0.370	0.364	0.370	1
108906C	10089	Lone Star Government ON	08/05/2019	892,943.54	892,943.54	892,943.54	0.150	0.147	0.150	1
		Subtotal and Average		**1,833,707.48**	**1,833,707.48**	**1,833,707.48**		**0.259**	**0.263**	**1**
		Total Investments and Average		**1,841,356.84**	**1,841,356.84**	**1,841,356.84**		**0.258**	**0.262**	**1**

Fund GEN - General Fund
Investments by Fund
July 31, 2020

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
Frost Bank											
999917	10022	Frost Bank Public Checking	07/01/2019	9,135,053.56	9,135,053.56	9,135,053.56	0.010	0.009	0.010		1
		Subtotal and Average		**9,135,053.56**	**9,135,053.56**	**9,135,053.56**		**0.010**	**0.010**		**1**
Municipal Bonds Actual											
882724PY7	10111	State of Texas Tax	03/23/2020	4,003,192.87	4,000,000.00	4,010,240.00	4.000	2.801	2.801	08/27/2020	26
		Subtotal and Average		**4,003,192.87**	**4,000,000.00**	**4,010,240.00**		**2.801**	**2.801**		**26**
Commercial Paper Disc. -Amortizing											
05990CHA5	10105	Banco Credito MIA CP	02/13/2020	1,999,110.00	2,000,000.00	1,999,110.00		1.795	1.820	08/10/2020	9
05990CNL4	10120	Banco Credito MIA CP	07/24/2020	1,995,413.33	2,000,000.00	1,995,413.33		0.481	0.487	01/20/2021	172
		Subtotal and Average		**3,994,523.33**	**4,000,000.00**	**3,994,523.33**		**1.139**	**1.155**		**90**
Municipal Bonds											
235036YT1	10114	DFW Int'l Airport Rev	04/07/2020	2,819,945.37	2,795,000.00	2,826,974.80	5.000	1.382	1.401	11/01/2020	92
95639PBF9	10117	West Virginia State Eco Dev	04/28/2020	1,939,531.05	1,875,000.00	1,948,293.75	5.000	1.006	1.020	06/15/2021	318
		Subtotal and Average		**4,759,476.42**	**4,670,000.00**	**4,775,268.55**		**1.229**	**1.246**		**184**
Texpool/Texpool Prime											
999921	10092	Texpool	08/05/2019	10,552,693.01	10,552,693.01	10,552,693.01	0.208	0.205	0.208		1
999920	10034	Texpool Prime	11/03/2015	10,591,205.51	10,591,205.51	10,591,205.51	0.418	0.412	0.417		1
		Subtotal and Average		**21,143,898.52**	**21,143,898.52**	**21,143,898.52**		**0.309**	**0.313**		**1**
Lone Star											
108906F	10099	Lone Star Corporate Overnight+	11/18/2019	0.00	0.00	0.00					1
108906	10003	Lone Star Corporate Overnight	11/01/2014	21,355,494.51	21,355,494.51	21,355,494.51	0.370	0.364	0.370		1
108906D	10090	Lone Star Government ON	08/05/2019	6,285,449.91	6,285,449.91	6,285,449.91	0.150	0.147	0.150		1
		Subtotal and Average		**27,640,944.42**	**27,640,944.42**	**27,640,944.42**		**0.316**	**0.320**		**1**
		Total Investments and Average		**70,677,089.12**	**70,589,896.50**	**70,699,928.38**		**0.523**	**0.528**		**19**

Fund PLAN457 - Plan 457 Fund
Investments by Fund
July 31, 2020

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999916	10021	Frost Bank Public Checking	07/01/2019	23,869.92	23,869.92	23,869.92	0.010	0.009	0.010	1
		Subtotal and Average		**23,869.92**	**23,869.92**	**23,869.92**		**0.010**	**0.010**	**1**
		Total Investments and Average		**23,869.92**	**23,869.92**	**23,869.92**		**0.010**	**0.010**	**1**

Fund PROP - Proprietary Fund
Investments by Fund
July 31, 2020

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999919	10024	Frost Bank Public Checking	07/01/2019	987,090.25	987,090.25	987,090.25	0.010	0.009	0.010	1
		Subtotal and Average		**987,090.25**	**987,090.25**	**987,090.25**		**0.010**	**0.010**	**1**
Lone Star										
108906A	10025	Lone Star Corporate Overnight	08/05/2015	4,206,851.91	4,206,851.91	4,206,851.91	0.370	0.364	0.370	1
108906E	10091	Lone Star Government ON	08/05/2019	4,304,661.46	4,304,661.46	4,304,661.46	0.150	0.147	0.150	1
		Subtotal and Average		**8,511,513.37**	**8,511,513.37**	**8,511,513.37**		**0.255**	**0.259**	**1**
		Total Investments and Average		**9,498,603.62**	**9,498,603.62**	**9,498,603.62**		**0.230**	**0.233**	**1**

Fund QSCB - QSCB - Reserve Fund
Investments by Fund
July 31, 2020

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
BNY Mellon											
882521	10014	BNY Mellon - Cash	07/01/2019	19,691.52	19,691.52	19,691.52					1
		Subtotal and Average		**19,691.52**	**19,691.52**	**19,691.52**		**0.000**	**0.000**		**1**
Municipal Bonds Actual											
882724PY7	10112	State of Texas Tax	03/23/2020	1,521,213.29	1,520,000.00	1,523,891.20	4.000	2.801	2.801	08/27/2020	26
		Subtotal and Average		**1,521,213.29**	**1,520,000.00**	**1,523,891.20**		**2.801**	**2.801**		**26**
Commercial Paper Disc. -Amortizing											
05990CNL4	10121	Banco Credito MIA CP	07/24/2020	2,494,266.67	2,500,000.00	2,494,266.67	0.480	0.481	0.487	01/20/2021	172
		Subtotal and Average		**2,494,266.67**	**2,500,000.00**	**2,494,266.67**		**0.481**	**0.488**		**172**
Federal Agency Coupon Securities											
3133ELW67	10122	FFCB Call Note	07/24/2020	1,998,529.41	2,000,000.00	1,998,820.62	0.220	0.254	0.257	07/21/2022	719
		Subtotal and Average		**1,998,529.41**	**2,000,000.00**	**1,998,820.62**		**0.254**	**0.258**		**719**
Municipal Bonds											
796815ZF8	10119	San Bernardino County CA	05/27/2020	2,519,623.80	2,490,000.00	2,532,205.50	2.030	0.986	1.000	10/01/2021	426
9143013U8	10083	University of Houston	02/27/2019	1,309,419.75	1,305,000.00	1,323,270.00	3.300	2.614	2.650	02/15/2021	198
		Subtotal and Average		**3,829,043.55**	**3,795,000.00**	**3,855,475.50**		**1.543**	**1.565**		**348**
		Total Investments and Average		**9,862,744.44**	**9,834,691.52**	**9,892,145.51**		**1.204**	**1.215**		**328**

Fund QSCBDS - QSCB - Debt Service
Investments by Fund
July 31, 2020

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
BNY Mellon										
882520	10040	BNY Mellon - Cash	07/01/2019	0.00	0.00	0.00				1
			Subtotal and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**
			Total Investments and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**

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McAllen ISD
Cash Reconciliation Report
For the Period July 1, 2020 - July 31, 2020
Grouped by Fund

Trans. Date	Investment #	Fund	Trans. Type	Security ID	Par Value	Security Description	Maturity Date	Purchases	Interest	Redemptions	Cash
General Fund											
07/09/2020	10110	GEN	Maturity	06742VCR0	2,000,000.00	BARCBK 2.0M 0.00% Mat.	07/09/2020	0.00	0.00	2,000,000.00	2,000,000.00
07/24/2020	10120	GEN	Purchase	05990CNL4	2,000,000.00	BCIMIA 2.0M 0.00% Mat. 01/20/2021	01/20/2021	-1,995,200.00	0.00	0.00	-1,995,200.00
07/27/2020	10104	GEN	Maturity	05990CGT5	2,500,000.00	BCIMIA 2.5M 0.00% Mat. 07/27/2020	07/27/2020	0.00	0.00	2,500,000.00	2,500,000.00
							Subtotal	**-1,995,200.00**	**0.00**	**4,500,000.00**	**2,504,800.00**
QSCB - Reserve Fund											
07/24/2020	10121	QSCB	Purchase	05990CNL4	2,500,000.00	BCIMIA 2.5M 0.48% Mat. 01/20/2021	01/20/2021	-2,494,000.00	0.00	0.00	-2,494,000.00
07/24/2020	10122	QSCB	Purchase	3133ELW67	2,000,000.00	FFCBC 2.0M 0.22% Mat. 07/21/2022	07/21/2022	-1,998,500.00	-36.67	0.00	-1,998,536.67
							Subtotal	**-4,492,500.00**	**-36.67**	**0.00**	**-4,492,536.67**
							Total	**-6,487,700.00**	**-36.67**	**4,500,000.00**	**-1,987,736.67**

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McAllen ISD
Purchases Report
Sorted by Fund - Fund
July 1, 2020 - July 31, 2020

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CUSIP	Investment #	Fund	Sec. Type	Issuer	Original Par Value	Purchase Date	Payment Periods	Principal Purchased	Accrued Interest at Purchase	Rate at Purchase	Maturity Date	YTM	Ending Book Value
General Fund													
05990CNL4	10120	GEN	ACP	BCIMIA	2,000,000.00	07/24/2020	01/20 - At Maturity	1,995,200.00			01/20/2021	0.481	1,995,413.33
				Subtotal	**2,000,000.00**			**1,995,200.00**	**0.00**				**1,995,413.33**
QSCB - Reserve Fund													
05990CNL4	10121	QSCB	ACP	BCIMIA	2,500,000.00	07/24/2020	01/20 - At Maturity	2,494,000.00		0.480	01/20/2021	0.481	2,494,266.67
3133ELW67	10122	QSCB	FAC	FFCBC	2,000,000.00	07/24/2020	01/21 - 07/21	1,998,500.00	36.67	0.220	07/21/2022	0.258	1,998,529.41
				Subtotal	**4,500,000.00**			**4,492,500.00**	**36.67**				**4,492,796.08**
				Total Purchases	**6,500,000.00**			**6,487,700.00**	**36.67**				**6,488,209.41**

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McAllen ISD
Maturity Report
Sorted by Maturity Date
Receipts during July 1, 2020 - July 31, 2020

CUSIP	Investment #	Fund	Sec. Type	Issuer	Par Value	Maturity Date	Purchase Date	Rate at Maturity	Book Value at Maturity	Interest	Maturity Proceeds	Net Income
06742VCR0	10110	GEN	ACP	BARCBK	2,000,000.00	07/09/2020	03/13/2020		2,000,000.00	0.00	2,000,000.00	0.00
05990CGT5	10104	GEN	ACP	BCIMIA	2,500,000.00	07/27/2020	01/31/2020		2,500,000.00	0.00	2,500,000.00	0.00
			Total Maturities		**4,500,000.00**				**4,500,000.00**	**0.00**	**4,500,000.00**	**0.00**

PATTERSON & ASSOCIATES
INVESTMENT PROFESSIONALS

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McAllen ISD
Interest Earnings
Sorted by Fund - Fund
July 1, 2020 - July 31, 2020
Yield on Average Book Value

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Average Book Value	Maturity Date	Current Rate	Annualized Yield	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: Activity Fund												
999915	10020	ACT	LA2	1,630,432.79	1,635,061.74	1,634,912.82		0.010	0.009	12.47	0.00	12.47
			Subtotal	**1,630,432.79**	**1,635,061.74**	**1,634,912.82**			**0.009**	**12.47**	**0.00**	**12.47**
Fund: Clearing Fund												
999914	10019	CLEAR	LA2	4,235,242.20	1,718,792.42	1,799,969.15		0.010	0.013	19.41	0.00	19.41
			Subtotal	**4,235,242.20**	**1,718,792.42**	**1,799,969.15**			**0.013**	**19.41**	**0.00**	**19.41**
Fund: Capital Projects Fund												
108906G	10101	CP	RR2	1,496,598.09	1,996,015.67	1,834,744.14		0.370	0.374	582.42	0.00	582.42
108906I	10108	CP	RR2	9,709,283.51	10,206,134.46	10,044,945.72		0.370	0.369	3,149.05	0.00	3,149.05
999922	10103	CP	LA2	460,920.92	759,982.03	663,509.45		0.010	0.009	5.06	0.00	5.06
SYS10109	10109	CP	LA2	514,041.44	743,960.30	669,791.44		0.010	0.009	5.11	0.00	5.11
108906J	10113	CP	RR2	9,704,263.57	10,202,974.41	10,041,725.67		0.150	0.151	1,289.16	0.00	1,289.16
108906H	10102	CP	RR2	1,495,648.51	1,995,410.15	1,834,127.52		0.150	0.153	238.36	0.00	238.36
95639PBF9	10116	CP	MC2	2,310,000.00	2,397,098.01	2,393,055.11	06/15/2021	5.000	0.998	9,625.00	-7,595.76	2,029.24
114727VW7	10118	CP	MC2	3,418,000.00	3,431,995.48	3,431,248.06	04/30/2021	1.750	1.229	4,984.58	-1,404.23	3,580.35
			Subtotal	**29,108,756.04**	**31,733,570.51**	**30,913,147.11**			**0.414**	**19,878.74**	**-8,999.99**	**10,878.75**
Fund: Debt Service Fund												
108906B	10032	DS	RR2	940,763.94	893,133.17	922,831.87		0.370	0.367	287.77	0.00	287.77
999918	10023	DS	LA2	7,649.36	7,478.93	7,500.92		0.010	0.009	0.06	0.00	0.06
108906C	10089	DS	RR2	892,943.54	892,829.23	892,832.92		0.150	0.151	114.31	0.00	114.31
			Subtotal	**1,841,356.84**	**1,793,441.33**	**1,823,165.70**			**0.260**	**402.14**	**0.00**	**402.14**
Fund: General Fund												
999921	10092	GEN	RRP	10,552,693.01	10,550,827.76	10,550,887.93		0.208	0.208	1,865.25	0.00	1,865.25
108906	10003	GEN	RR2	21,355,494.51	14,789,775.18	16,054,037.16		0.370	0.363	4,948.09	0.00	4,948.09
999917	10022	GEN	LA2	9,135,053.56	5,780,263.67	5,888,484.48		0.010	0.011	53.57	0.00	53.57
999920	10034	GEN	RRP	10,591,205.51	10,587,447.20	10,587,568.44		0.418	0.418	3,758.31	0.00	3,758.31
108906D	10090	GEN	RR2	6,285,449.91	14,783,870.18	11,864,566.30		0.150	0.157	1,579.73	0.00	1,579.73
05990CNL4	10120	GEN	ACP	2,000,000.00	0.00	514,921.29	01/20/2021		0.488	0.00	213.33	213.33

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Average Book Value	Maturity Date	Current Rate	Annualized Yield	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: General Fund												
05990CGT5	10104	GEN	ACP	0.00	2,496,713.89	2,095,449.15	07/27/2020		1.846	0.00	3,286.11	3,286.11
05990CHA5	10105	GEN	ACP	2,000,000.00	1,996,044.44	1,997,626.67	08/10/2020		1.807	0.00	3,065.56	3,065.56
06742VCR0	10110	GEN	ACP	0.00	1,999,355.56	516,056.27	07/09/2020		1.470	0.00	644.44	644.44
882724PY7	10111	GEN	NCB	4,000,000.00	4,006,999.75	4,005,034.90	08/27/2020	4.000	2.865	13,551.91	-3,806.88	9,745.03
235036YT1	10114	GEN	MC2	2,795,000.00	2,828,260.50	2,823,834.71	11/01/2020	5.000	1.389	11,645.83	-8,315.13	3,330.70
95639PBF9	10117	GEN	MC2	1,875,000.00	1,945,696.44	1,942,414.86	06/15/2021	5.000	0.998	7,812.50	-6,165.39	1,647.11
			Subtotal	**70,589,896.50**	**71,765,254.57**	**68,840,882.15**			**0.584**	**45,215.19**	**-11,077.96**	**34,137.23**
Fund: Plan 457 Fund												
999916	10021	PLAN457	LA2	23,869.92	27,419.04	25,587.15		0.010	0.009	0.19	0.00	0.19
			Subtotal	**23,869.92**	**27,419.04**	**25,587.15**			**0.009**	**0.19**	**0.00**	**0.19**
Fund: Proprietary Fund												
108906A	10025	PROP	RR2	4,206,851.91	4,305,508.34	4,295,874.26		0.370	0.368	1,343.57	0.00	1,343.57
999919	10024	PROP	LA2	987,090.25	672,788.87	682,927.86		0.010	0.014	7.96	0.00	7.96
108906E	10091	PROP	RR2	4,304,661.46	4,304,110.41	4,304,128.19		0.150	0.151	551.05	0.00	551.05
			Subtotal	**9,498,603.62**	**9,282,407.62**	**9,282,930.30**			**0.241**	**1,902.58**	**0.00**	**1,902.58**
Fund: QSCB - Reserve Fund												
882521	10014	QSCB	LA1	19,691.52	4,512,228.19	3,352,863.89				0.00	0.00	0.00
3133ELW67	10122	QSCB	FAC	2,000,000.00	0.00	515,746.68	07/21/2022	0.220	0.262	85.55	29.41	114.96
9143013U8	10083	QSCB	MC2	1,305,000.00	1,310,103.21	1,309,739.43	02/15/2021	3.300	2.612	3,588.75	-683.46	2,905.29
05990CNL4	10121	QSCB	ACP	2,500,000.00	0.00	643,651.61	01/20/2021	0.480	0.488	0.00	266.67	266.67
882724PY7	10112	QSCB	NCB	1,520,000.00	1,522,659.90	1,521,913.26	08/27/2020	4.000	2.865	5,149.72	-1,446.61	3,703.11
796815ZF8	10119	QSCB	MC2	2,490,000.00	2,521,739.78	2,520,613.53	10/01/2021	2.030	0.979	4,212.25	-2,115.98	2,096.27
			Subtotal	**9,834,691.52**	**9,866,731.08**	**9,864,528.41**			**1.085**	**13,036.27**	**-3,949.97**	**9,086.30**
			Total	**126,762,849.43**	**127,822,678.31**	**124,185,122.80**			**0.535**	**80,466.99**	**-24,027.92**	**56,439.07**

PATTERSON & ASSOCIATES
INVESTMENT PROFESSIONALS

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
-

McAllen ISD
Amortization Schedule
July 1, 2020 - July 31, 2020
Sorted By Fund - Fund

Investment # / Issuer	Fund	Maturity Date / Amort. Date	Beginning Par Value / Current Rate	Purchase Principal	Original Premium or Discount	Ending Book Value	Amounts Amortized And Unamortized As of 07/01/2020	Amount Amortized This Period	Amt Amortized Through 07/31/2020	Amount Unamortized Through 07/31/2020
Capital Projects Fund										
10118 Broome County NY	CP	04/30/2021	3,418,000.00 1.750	3,434,850.74	16,850.74	3,430,591.25	-2,855.26 13,995.48	-1,404.23	-4,259.49	12,591.25
10116 West Virginia State Eco Dev	CP	06/15/2021	2,310,000.00 5.000	2,413,049.10	103,049.10	2,389,502.25	-15,951.09 87,098.01	-7,595.76	-23,546.85	79,502.25
		Subtotal		**5,847,899.84**	**119,899.84**	**5,820,093.50**	**-18,806.35 101,093.49**	**-8,999.99**	**-27,806.34**	**92,093.50**
General Fund										
10110 Barclays Bank CP	GEN	07/09/2020	2,000,000.00	1,990,494.44	-9,505.56	0.00	8,861.12 -644.44	644.44	9,505.56	0.00
10104 Banco Credito MIA CP	GEN	07/27/2020	2,500,000.00	2,477,502.78	-22,497.22	0.00	19,211.11 -3,286.11	3,286.11	22,497.22	0.00
10105 Banco Credito MIA CP	GEN	08/10/2020	2,000,000.00	1,982,298.89	-17,701.11	1,999,110.00	13,745.55 -3,955.56	3,065.56	16,811.11	-890.00
10120 Banco Credito MIA CP	GEN	01/20/2021	2,000,000.00	1,995,200.00	-4,800.00	1,995,413.33	0.00 -4,800.00	213.33	213.33	-4,586.67
10114 DFW Int'l Airport Rev	GEN	11/01/2020	2,795,000.00 5.000	2,851,542.85	56,542.85	2,819,945.37	-23,282.35 33,260.50	-8,315.13	-31,597.48	24,945.37
10111 State of Texas Tax	GEN	08/27/2020	4,000,000.00 4.000	4,019,280.00	19,280.00	4,003,192.87	-12,280.25 6,999.75	-3,806.88	-16,087.13	3,192.87
10117 West Virginia State Eco Dev	GEN	06/15/2021	1,875,000.00 5.000	1,958,643.75	83,643.75	1,939,531.05	-12,947.31 70,696.44	-6,165.39	-19,112.70	64,531.05
		Subtotal		**17,274,962.71**	**104,962.71**	**12,757,192.62**	**-6,692.13 98,270.58**	**-11,077.96**	**-17,770.09**	**87,192.62**
QSCB - Reserve Fund										
10121 Banco Credito MIA CP	QSCB	01/20/2021	2,500,000.00 0.480	2,494,000.00	-6,000.00	2,494,266.67	0.00 -6,000.00	266.67	266.67	-5,733.33
10122 FFCB Call Note	QSCB	07/21/2022 07/21/2021	2,000,000.00 0.220	1,998,500.00	-1,500.00	1,998,529.41	0.00 -1,500.00	29.41	29.41	-1,470.59
10119 San Bernardino County CA	QSCB	10/01/2021	2,490,000.00 2.030	2,524,137.90	34,137.90	2,519,623.80	-2,398.12 31,739.78	-2,115.98	-4,514.10	29,623.80
10112 State of Texas Tax	QSCB	08/27/2020	1,520,000.00 4.000	1,527,326.40	7,326.40	1,521,213.29	-4,666.50 2,659.90	-1,446.61	-6,113.11	1,213.29
10083 University of Houston	QSCB	02/15/2021	1,305,000.00 3.300	1,321,129.80	16,129.80	1,309,419.75	-11,026.59 5,103.21	-683.46	-11,710.05	4,419.75

Investment # / Issuer	Fund	Maturity Date / Amort. Date	Beginning Par Value / Current Rate	Purchase Principal	Original Premium or Discount	Ending Book Value	Amounts Amortized And Unamortized As of 07/01/2020	Amount Amortized This Period	Amt Amortized Through 07/31/2020	Amount Unamortized Through 07/31/2020
			Subtotal	9,865,094.10	50,094.10	9,843,052.92	-18,091.21 32,002.89	-3,949.97	-22,041.18	28,052.92
			Total	32,987,956.65	274,956.65	28,420,339.04	-43,589.69 231,366.96	-24,027.92	-67,617.61	207,339.04

PATTERSON & ASSOCIATES
INVESTMENT PROFESSIONALS

McAllen ISD
Projected Cashflow Report
Sorted by Monthly
For the Period August 1, 2020 - February 28, 2021

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
-

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
August 2020										
08/10/2020	10105	GEN	05990CHA5	Maturity	Banco Credito MIA CP	2,000,000.00	1,982,298.89	2,000,000.00	0.00	2,000,000.00
08/15/2020	10083	QSCB	9143013U8	Interest	University of Houston	0.00	0.00	0.00	21,532.50	21,532.50
08/27/2020	10111	GEN	882724PY7	Maturity	State of Texas Tax	4,000,000.00	4,019,280.00	4,000,000.00	156,502.73	4,156,502.73
08/27/2020	10112	QSCB	882724PY7	Maturity	State of Texas Tax	1,520,000.00	1,527,326.40	1,520,000.00	59,471.04	1,579,471.04
					Total for August 2020	**7,520,000.00**	**7,528,905.29**	**7,520,000.00**	**237,506.27**	**7,757,506.27**
October 2020										
10/01/2020	10119	QSCB	796815ZF8	Interest	San Bernardino County CA	0.00	0.00	0.00	25,273.50	25,273.50
					Total for October 2020	**0.00**	**0.00**	**0.00**	**25,273.50**	**25,273.50**
November 2020										
11/01/2020	10114	GEN	235036YT1	Maturity	DFW Int'l Airport Rev	2,795,000.00	2,851,542.85	2,795,000.00	69,875.00	2,864,875.00
					Total for November 2020	**2,795,000.00**	**2,851,542.85**	**2,795,000.00**	**69,875.00**	**2,864,875.00**
December 2020										
12/15/2020	10116	CP	95639PBF9	Interest	West Virginia State Eco Dev	0.00	0.00	0.00	57,750.00	57,750.00
12/15/2020	10117	GEN	95639PBF9	Interest	West Virginia State Eco Dev	0.00	0.00	0.00	46,875.00	46,875.00
					Total for December 2020	**0.00**	**0.00**	**0.00**	**104,625.00**	**104,625.00**
January 2021										
01/20/2021	10120	GEN	05990CNL4	Maturity	Banco Credito MIA CP	2,000,000.00	1,995,200.00	2,000,000.00	0.00	2,000,000.00
01/20/2021	10121	QSCB	05990CNL4	Maturity	Banco Credito MIA CP	2,500,000.00	2,494,000.00	2,500,000.00	0.00	2,500,000.00
01/21/2021	10122	QSCB	3133ELW67	Interest	FFCB Call Note	0.00	0.00	0.00	2,200.00	2,200.00
					Total for January 2021	**4,500,000.00**	**4,489,200.00**	**4,500,000.00**	**2,200.00**	**4,502,200.00**
February 2021										
02/15/2021	10083	QSCB	9143013U8	Maturity	University of Houston	1,305,000.00	1,321,129.80	1,305,000.00	21,532.50	1,326,532.50
					Total for February 2021	**1,305,000.00**	**1,321,129.80**	**1,305,000.00**	**21,532.50**	**1,326,532.50**
					GRAND TOTALS:	**16,120,000.00**	**16,190,777.94**	**16,120,000.00**	**461,012.27**	**16,581,012.27**

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Human Resources Recommendation(s) for School Year 2020-2021

REFERENCE: Goal 2: People Development; Strategy 2: Attract/Retain High Quality Staff

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District utilizes a comprehensive hiring system that screens, evaluates and recommends the "best" candidates with the skill sets to maximize student learning. All recommended candidates meet compliance with State Law requirements, that is to increase the academic achievement of all students by helping campuses and district improve teacher quality.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Considerations are made in accordance with Board Policy DC (LEGAL) and District Staffing Guidelines. Individual(s) to be identified under separate cover.

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS:

Provided with individuals identified under separate cover.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve Human Resources recommendations for School Year 2020-2021.

SUBMITTED BY: _____ **SUPERVISOR:** Todd Miller

For further information contact:
Name: Todd Miller
Office: Human Resources (956) 618-6009
eMail: Todd.Miller@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Oct 6, 2020

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Human Resources Employee Resignation(s) for School Year 2020-2021

REFERENCE: Goal 2: People Development; Strategy 2: Attract/Retain High Quality Staff

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Employees desiring to voluntarily separate from the school district for reasons such as retirement, relocation or other such reasons provide written notice to their immediate supervisor and the Human Resources Department. All resignations include current position, work site and date resignation is to be effective.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Human Resources Department shall notify all appropriate personnel of the resignation, including the Payroll Department. All vacant positions will be closely reviewed by corresponding department administration, along with aligning to staffing guidelines and addressing staffing needs in determining position status.

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS: Not Applicable

RECOMMENDED BOARD ACTION:

This item is for information only. No Board action required.

SUBMITTED BY: _____ **SUPERVISOR:** Todd M Miller

For further information contact:
Name: Todd Miller
Office: Human Resources (956) 618-6009
eMail: todd.miller@mcallenisd.net

Approved for presentation to the Board of Education:

J. Hinojosa

Superintendent of Schools Oct 6, 2020

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Amendment to the Agreement with McAllen Preventative Care Institute through Request for Qualifications No. 2018-013 - Employer Direct Clinical Services

REFERENCE: Goal 4, Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
On August 27, 2018 the Board of Trustees approved Request for Qualifications No. 2018-013 - Employer Direct Clinical Services to McAllen Preventative Care Institute for a term commencing August 28, 2018 to December 31, 2021.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
In light of the COVID-19 pandemic, the District and McAllen Preventative Care would like to amend the Agreement to include COVID-19 services to be performed for employees at a District location.

LEGAL REVIEW:

The amendment has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

The COVID-19 claim expenses will be paid through the health plan fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Amendment to the Agreement with McAllen Preventative Care Institute through Request for Qualifications No. 2018-013 - Employer Direct Clinical Services

SUBMITTED BY: Andres Silva (Oct 2, 2020 14:46 CDT)

SUPERVISOR:

For further information contact:
Name: Andres Silva
Office: (956) 618-6007
eMail: andres.silva@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

FIRST AMENDMENT TO CONTRACT NO. 2018-013

CONSULTING AGREEMENT No. 2018-013 – EMPLOYER DIRECT CLINICAL SERVICES

This First Amendment to the Contract No. 2018-013 is made this 13th day of October, 2020 by and between McAllen Independent School District ("District") and McAllen Preventative Care Institute, a Texas Corporation ("Contractor") is made between the District and Contractor as follows:

WHEREAS, the District entered into a Contract No. 2018-013 dated August 13, 2018; and

WHEREAS, the District and Contractor desire to amend the Contract to reflect accurately reflect the specifications.

NOW THEREFORE, for and in consideration of the clarification of the terms and provisions set forth herein and, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Contractor hereby agree to the following amendment to the Contract.

1. Exhibit A of the Agreement is deleted in its entirety and Exhibit A attached hereto is substituted in lieu thereof;
2. Except as modified herein, all terms and conditions of the Contract, as amended, remain in full force and effect. District and Contractor ratify and confirm the terms and provisions of the Contract as amended.

EXECUTED IN DUPLICATE ORIGINALS and effective as of 1 Oct. 2020.
Date

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
Conrado Alvarado,
President, Board of Trustees

MCALLEN PREVENTATIVE CARE INSTITUTE

By: _____
Name: Robert Cerranza
Title: General Manager

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: _____
Stephen Crain

EXHIBIT "A"

Definition of Services

Consultant agrees to provide only reasonable, necessary, and allocable services as follows:

Description of Services

A. Contractor will provide the following materials/services:

1. The Contractor shall provide high quality healthcare services to District employees and agree to also provide such services to qualified dependents. These services will include routine Family Practice Medicine by walk-in or appointment and Specialty Care provided by appointment only. Employees may be referred by the District or self refer for medical care.

2. Contractor shall provide the following services under this Agreement:

   Family Practice & Routine Family Care
   Cardiology by Appointment
   Internal Medicine by Appointment
   Work and School Physicals
   Adult and Children Screening Programs
   Drug and Alcohol Testing
   Immunizations
   Prostate Screening
   Workers Compensation
   Minor Office Surgery
   Lab and X-Ray Services
   Health Education
   Hospitalization Referral Services[1]
   Home Health Referrals
   Bilingual Staff
   Imaging Services (as available based on imaging equipment availability)

3. Contractor shall provide to the District employee after required medical treatment the normal doctors "Absence From Work" form. If treatment is under an approved work related Treatment Authorization issued by the District, Contractor shall provide required Texas Workers Compensation Work Status forms to the District and Third Party Claims Administrator within 24 hrs. via facsimile or email.

4. Contractor agrees to a Not to Exceed wait time of 30 minutes Monday-Friday between 8 am and 10 am for single symptom treatment. Compliance with wait time guarantee will be monitored by District based on reporting in accordance with No. 13.

5. Contractor agrees to same day walk in service and same day appointments Monday-Friday between 8 am and 10 am.

6. Contractor will be responsible for all aspects of enrollment of District employees in the Contractor's Clinic at the time of individual patient encounters for such required medical care. In addition, Contractor will provide required forms for enrollment as well as patient education related materials to complement the delivery of routine walk-in and appointments for such medical care.

7. Contractors will provide a program for licensed staff to provide patient education to District employee on a scheduled basis to focus on preventive health issues.

8. Contractor shall provide drug screening and testing as required by District at the Clinic.

[1] Referral Services shall be based on employee choice of providers. In all cases, any referrals shall be made to providers participating in the then current employer health care network first, if available.

9. Contractor shall provide the following routine services:

Same Day Appointments
Walk-Ins without Appointment
Dependent Medical Care
Maximum Wait time of 30 minutes
Hospital Admission Referrals
Health and Wellness Outreach
District Workers Compensation Provider Network Participation
Specialty Care by Appointment for Cardiology and Internal Medicine
Pre-Enrollment of Employees to Expedite Treatment

10. Diagnostic Imaging Services ordered by the Contractor physician for enrolled District employees under this contract will be provided in accordance with Exhibit "B", Fee Schedule.

11. District covered members not seeking routine medical care at the facility but that are referred to Contractor for Diagnostic Imaging only and who show proper identification as a District covered member shall also receive services in accordance with Exhibit "B", Fee Schedule for Diagnostic Imaging Service as described in Exhibit "F".

12. Contractor agrees that discount rates and co-pay structure as outlined in Exhibit "B", Fee Schedule, will be extended to District health plan participants and non enrolled members and dependents during the term of this contract.

13. Contractor agrees to provide District no less than monthly, a mutually agreed upon and HIPAA compliant reporting package for the purpose of tracking utilization, cost and compliance with wait time guarantees, etc.

14. Contractor agrees to develop, with District input, a voluntary survey to be presented to all District members, results of which shall be summarized and reported to the District on a quarterly basis.

15. COVID – 19

a. Contractor agrees to provide a private on-site COVID-19 sample collection for District employees, and potentially open the site to health plan dependents in a second phase of implementation.
b. Contractor will provide appropriate staffing, personal protective equipment, supplies, and waste management to conduct COVID-19 PCR sample collection at a District location.
c. Contractor will conduct sample from Monday through Friday from 8 am to 11 am. The District reserves the right to shift hours (increase/decrease) as well as modify days (including adding Saturday) based on District needs.
d. Contractor will collect samples and store them appropriately for pick up and analysis by a third party laboratory selected by the District. Unless authorized by the District, the Contractor will not process and bill for laboratory analyses of COVID-19 samples.
e. Contractor will accept test results from third party laboratory and will send notice to a chosen District designee that includes a copy of the test results and employee release paperwork while simultaneously outreaching the patient to notify them of results.
f. Contractor shall bill for sample collection service only.
g. Contractor shall submit sample collection claim for processing and payment to District's third party medical claims administrator, currently Blue Cross Blue Shield of Texas.
h. Contractor shall bill standard billing codes for COVID samples as follows: Initial new patient code of 99203 or 99204, All other patients and consults will be billed as code 99213 or 99214.
i.

B. McAllen ISD will provide the following:

1. Provide District employee seeking medical treatment the Contractor's location. Site maps for this purpose are available and will be provided with an informational brochure.

2. Inform District employees of the requirement to show proof of identification at the time of enrollment and treatment.

3. Inform District employee of discounted rates for co-payments negotiated with District.

4. For COVID-19 sample collection, the District will select the sample collection site, provide scheduling assistance, demographic and/or patient medical history information, site set-up and site logistics assistance, designate the primary District contact(s) and provide coordination with third party laboratory.

MCALLEN INDEPENDENT SCHOOL DISTRICT

CONSULTING AGREEMENT No. 2018-013 – EMPLOYER DIRECT CLINICAL SERVICES

THIS Agreement, made and entered by and between the **MCALLEN INDEPENDENT SCHOOL DISTRICT** ("District") and **MCALLEN PREVENTATIVE CARE INSTITUTE,** a Texas Non-Profit Corporation, hereinafter referred to as ("Consultant").

WITNESSETH:

WHEREAS, District recognizes that the Employee Benefit Department of District (the "Department"); requires a qualified agency for the purpose of providing primary health care and health education services to employees of District and at the option of the District, their dependent family members; and

WHEREAS, District requested qualification statements from vendors for the certain services, such services more particularly described on Exhibit A attached hereto (the "Services).

WHEREAS, Consultant submitted a response to the District's Request for Qualifications.

WHEREAS, District has determined that the proper, orderly and efficient delivery of quality Services for the District can be accomplished best by contracting with Consultant in accordance with the local, state and federal regulations for procurement;

WHEREAS, District has determined that for proper and efficient operation of the Department several objectives must be met, including, among others, coordination of schedules and assignments, administrative ease and efficiency, consistency and uniformity in book and recordkeeping, and the delivery of quality services;

WHEREAS, the Consultant is willing to accept the responsibility of providing the Services to the District in accordance with recognized standards, the Board Policies of District, applicable laws and regulations and the terms and conditions set forth in this Agreement;

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the provision of the Services by Consultant during the term of this Agreement;

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and of the mutual covenants and conditions hereinafter expressed, the parties hereto covenant each with the other, as follows:

1. OBLIGATIONS OF THE CONSULTANT

The Consultant agrees to provide the following Services to District during the term of this Agreement:

a. Performance of Services. The Consultant will provide the Services described on Exhibit "A" attached hereto and incorporated herein at this point for all purposes and will use proper professional standards in providing the services to District.

b. Billing. As consideration for providing the services pursuant to the Agreement, District agrees to allow the Consultant to bill all third party pay sources for the purpose of allowing reimbursement for medical services provided. Such billing will be based on standard diagnostic codes and standard reimbursement rates for all District employees enrolled and treated by Consultant. Priority will be given to District employees who walk in or have appointments for medical treatment, however, dependent care will be provided by appointment to address the District employees return to productive work expeditiously. The billing codes and standard fees are described in Exhibit "B", Fee Schedule, a copy of which is attached and incorporated herein for all purposes.

c. Administration. The Consultant will communicate with the Administrator(s) designated by District regarding the administration of the Services and this Agreement. Notwithstanding anything herein to the contrary, District will not have or exercise control over the manner in which the professional services of the Consultant are performed as would jeopardize the status of the Consultant as an independent contractor.

d**. Quality of Services**. The Consultant will continually work to improve the quality of and maintain a reasonable cost for provision of the Services furnished to District. In furtherance thereof, Consultant agrees to fully cooperate with personnel designated by District.

e**. Records**. Consultant shall, at Consultant's expense, keep or cause to be kept for three (3) years following the provision of the Services accurate and complete records in an adequate filing

system. Consultant shall furnish District on written request copies of all such records to the extent such records are not prohibited from disclosure to District by applicable law.

f. **Ethics**. Consultant shall insure that, in performing the Services under this Agreement, Consultant uses his best and most diligent efforts and professional skills, performs professional and supervisory services, and renders the Services in accordance with and in a manner consistent with the highest standards of Consultant's profession and comply with all applicable laws and regulations related thereto.

g. **Certification**. Consultant shall maintain Consultant's license and all legally required certificates in the State of Texas as is required to perform the Services.

h. **Confidentiality of Records**. The Consultant shall maintain the confidentiality of records in accordance with applicable laws and regulations to assure a proper accounting to the District of all funds reimbursed to Consultant from third party sources hereunder. Consultant will not release such confidential information to any party without first obtaining the appropriate consent from District's employee, District employee's spouse, parents/guardians, and or the District employee's dependent to whom the information pertains.

i. Confidentiality. Health Insurance Portability and Accountability Act (HIPAA) Compliance – The Consultant shall comply with all requirements set forth by the Health Insurance Portability and Accountability Act (HIPAA) including, but not limited to, the requirements for Electronic Data Interchange (EDI) and Privacy and the Texas Open Records Act. Consultant shall be able to provide proof of HIPAA compliance as described on **Exhibit "D"** attached hereto and incorporated herein at this point for all purposes.

j. **Family Educational Rights and Privacy Act (FERPA).** Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent except as provided in the Family Educational Rights and Privacy Act (FERPA).

k. Non-Exclusive Services of Consultant. The District reserves the right to request these services from other sources other than the Consultant and shall not be in violation of any terms or conditions of this Agreement.

l. Consultant represents and warrants to District and its employees that Consultant possesses any and all the necessary licenses and/or permits required by state, federal or local authorities and that it possesses or can obtain the necessary skills and expertise to perform the services provided hereunder. Consultant further represents and warrants that there are no current pending legal or administrative proceedings relating to the conduct of its business. Consultant understands that District have relied and are relying on Consultant representations and warranties as a material element of this Agreement.

m. Consultant, at all times, will act as an independent contractor and will not act or hold itself out to third parties as an employee or agent of District in the provision of services under the terms of this Agreement. District will not withhold income tax or FICA tax on behalf of Consultant or any of Consultant's partners, employees, subcontractors or agents. In addition, none of the foregoing shall have any claim under this Agreement or otherwise against District for vacation pay, sick leave, unemployment insurance, worker's compensation, retirement benefits, disability benefits, or employee benefits of any kind. Consultant will have the exclusive responsibility for the payment or provision of all such taxes and benefits and arrangement for all insurance coverages for its employees, agents, officers or partners, and shall discharge such obligations fully.

n. CRIMINAL HISTORY INFORMATION. Pursuant to Texas Education Code Section 22.0834 (Senate Bill 9), Consultant shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of the Consultant if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the Services, and the duties are or will be performed on school property or at another location where students are regularly present.

o. HB 89: Anti-BDS: Bidder verifies it does and will not boycott Israel during the term of the contract, pursuant to Texas Gov't Code §2270.

p. Sec. 2252.152. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.

A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

- Sec. 2252.153. LISTED COMPANIES. The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
- Sec. 2252.154. EXCEPTION. Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3. This Act takes effect September 1, 2017.

Consultant shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process was followed.

Consultant shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District's property or other location where students are regularly present, District shall be the final decider of what constitutes a "location where students are regularly present." Consultant's violation of this section shall constitute a material breach of Agreement.

If the Consultant is the person or owner or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence of compliance acceptable to District, with this Contract.

2. INSURANCE COVERAGE

At all times during the term of this Agreement, Consultant will, at Consultant's expense, carry and maintain the following insurance coverages with the minimum coverage amounts as follows:

a. Statutory Workman's Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

b. Professional Liability -$1,000,000 each claim and in the aggregate

c. Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate. The District shall be named as an additional insured by endorsement on the Consultant's policy as to the subject job.

d. The Consultant will provide a certificate of insurance to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason. Such Certificate of insurance shall be attached to this Agreement as Exhibit C.

3. CONSULTANT'S COVENANTS AND WARRANTIES

Consultant makes the following representations and warranties to District with respect to each Consultant or employee of Consultant providing Services hereunder.

a. **Licensure**. Consultant is duly licensed to provide the Services in the State of Texas to the extent licensure is required to provide the Services.

b. **Suspension of License**. Consultant's license to provide the Services in any state has never been suspended or revoked.

c. **Discipline**. Consultant has never been reprimanded, sanctioned, or disciplined by a licensing board or state or local society or specialty board.

d. **Malpractice Judgment**. There has never been entered against Consultant a final judgment in a malpractice action having an aggregate award to the plaintiff in excess of $10,000.00.

e. **Settlement**. No action based on an allegation of malpractice by Consultant has ever been settled by payment to the plaintiff of an aggregate amount in excess of $10,000.00.

f. **Debarment and Suspension.** Consultant hereby certifies that Consultant is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and

12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

4. PARTIES’ RELATIONSHIP

The Consultant, at all times will act as an independent contractor providing the Services and will not act or hold himself out to third parties as an employee or agent of District in the provision of the Services or materials under this Agreement. The District shall not control how the results or the details of the Services are provided and/or achieved. As an independent contractor, Consultant shall supply its own tools, equipment, materials, supplies and/or labor as may be necessary to complete the Services described in **Exhibit “A”** attached hereto and shall not rely on or require the District to supply any of the above, unless otherwise specified in this Agreement.

5. TAXES AND BENEFITS

District will not withhold income tax or Social Security tax on behalf of the Consultant or any of Consultant’s partners, employees, subcontractors, or agents. In addition, none of the foregoing will have any claim under this Agreement or otherwise against District for vacation pay, sick leave, unemployment insurance, worker’s compensation, retirement benefits, disability benefits, or employee benefits of any kind. The Consultant will have exclusive responsibility for the payment of all such taxes and arrangement for insurance coverage and will discharge such responsibility fully.

6. INCURRING FINANCIAL OBLIGATION

The Consultant will incur no financial obligation on behalf of District without prior written approval from the Superintendent of District or Superintendent’s designee.

7. CONSULTATION

While this Agreement is in effect, the parties understand that the Consultant may not be the exclusive source of providing the Services.

8. PROFESSIONAL ASSOCIATES

The Consultant may, at the Consultant’s expense, contract with such other consultants as the Consultant deems necessary or appropriate (hereinafter collectively referred to as “Associates”) to assist Consultant in the fulfillment of Consultant’s obligations under this Agreement. The Consultant will be fully

responsible for performing or assuring that any Associate performs the Services in compliance with the provisions of this Agreement. Furthermore, all Associates must be currently licensed in the State of Texas to provide the Services to the extent licensure is required to provide the Services. No Associates will be permitted to perform Services under this Agreement until they have agreed in writing to be bound by all of the provisions of this Agreement as evidenced by an executed document attached hereto as **Exhibit "G"** and have provided such document to District.

9. FEES TO CONSULTANT

As consideration for providing the services pursuant to the Agreement, District agrees to allow the Consultant to bill all third party pay sources for the purpose of allowing reimbursement for medical services provided. Such billing will be based on standard diagnostic codes and standard reimbursement rates for all District employees enrolled and treated by Consultant. Priority will be given to District employees who walk in or have appointments for medical treatment, however, dependent care will be provided by appointment to address the District employees return to productive work expeditiously. The billing codes and standard fees are described in Exhibit "B", Fee Schedule, a copy of which is attached and incorporated herein for all purposes.

10. ACCESS TO BOOKS AND RECORDS

Consultant recognizes that District is a participant in governmental payment programs. In connection with such programs, the Consultant agrees to cooperate with District and provide to District reasonable assistance in District's efforts to meet the requirements for participation in and payment under such programs. Consultant further agrees that in the event this Agreement is determined to be a contract within the coverage of U.S.C. §1395X(b)(I)(1), then:

a. Until the expiration of four (4) years after the furnishing of Services pursuant to this Agreement, Consultant shall make available upon written request to the Secretary (as defined in said statute), or any of their duly authorized representatives, this Agreement, and books, documents and records of the Consultant that are necessary to certify the nature and extent of such costs, and;

b. If the Consultant carries out any of the duties of this Agreement through a subcontract, with a value or cost of $10,000.00 or more over a twelve (12) month period, with a related organization, such

subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General (as defined in said statute), or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs. The parties agree that the preceding sentence shall be construed in accordance with 42 U.S.C. §1395X(v)(I)(1) and regulations promulgated there under. No attorney-client or other legal privilege will be deemed to have been waived by the MISD or Consultant by virtue of this Agreement.

c. If this Agreement is determined to be a contract within the coverage of 42 U.S.C. §1395X(b)(I)(1) or if District, pursuant to any agreement executed subsequent to the date hereof, provides Consultant an income subsidy or fees or compensation in addition to the fees or compensation specified herein, then upon the written request of the Superintendent of the District, the Consultant shall make available those contracts, books, documents, and records necessary to verify the nature and extent of the revenue derived from and/or the cost of providing services under this Agreement. Such inspection by District or its representatives shall be available up to four (4) years after the date of the rendering of such services.

11. NON-DISCRIMINATION

Consultant will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing services under this Agreement or in the selection of Associates, employees, or independent contractors.

12. HOLD HARMLESS

Consultant will indemnify and hold District harmless from any and all claims, actions, liability, and expenses (including costs of judgments, settlements, court costs, and attorney's fees, regardless of the outcome of such claim or action) caused by, resulting from , or alleging negligent or intentional acts or omissions or any failure to perform any obligation undertaken or any covenant in this Agreement, whether such act, omission, or failure was the Consultant's or that of any person providing Services hereunder through or for the Consultant. Upon written notice from District, the consultant will resist and defend at Consultant's expense, and by counsel reasonably satisfactory to District any such claim or action.

Consultant will carry proper insurance with District as an additional named insured to the extent such is reasonably available.

13. TERM AND TERMINATION OF AGREEMENT

a. Term. The term of this agreement shall be for a term commencing August 28, 2018 to December 31, 2021. All services must be completed during the term of the Agreement.

b. Termination without Cause. The District reserves the right to terminate this Agreement in part or in whole without cause on thirty (30) days written notice to the Consultant. Consultant shall not be entitled to lost profits or any further compensation not earned prior to time of such termination.

c. Termination with Cause. If either party fails to observe or perform in a material manner any term or condition of this Agreement to be performed or observed by such party, the aggrieved party shall send written notice specifying the nature of the alleged default. If the default is not fully cured within ten (10) days after giving the notice, then the aggrieved party may elect to terminate this Agreement with thirty (30) days written notice to the other party.

d. Non-Interference. Following the expiration of this Agreement or its termination for any reason, Consultant agrees to do nothing that may interfere with the Services already rendered.

14. NOTICES

Any notices or payments permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or mailed by certified mail, postage prepaid, to the other party at the address set forth below or to such other persons and address as either party may designate in writing:

If to the Consultant:	McAllen Preventative Care Institute ATTN: Nikki Mangseth - Administrator 500 S. Bicentennial Blvd. McAllen, TX 78501
If to District:	Dr. Jose A. Gonzalez, Superintendent McAllen Independent School District 2000 North 23rd Street McAllen, Texas 78501-6126

15. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THIS AGREEMENT ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS.

16. NO IMPLIED WAIVER

Any waiver of enforcement of any provision or waiver of any breach of this Agreement, whether or not recurring, shall not be construed as a waiver of any subsequent enforcement or breach.

17. SEVERABILITY

The invalidity or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provision.

18. ASSIGNABILITY

The right and obligations of District hereunder shall inure to the benefit of and be binding upon the successors and assigns of District. The Consultant may not assign Consultant's rights or obligations under this Agreement without District's written consent but Consultant in their normal course of business does sub-contract for clinical and professional services which is accepted practice in the industry and permissible under this Agreement. (Example: Physicians are not employees but independent licensed contractors with Contractor under Medical Service Agreements that comply with all applicable laws and compliances, training and professional conduct. Any assignment in violation of this provision shall give District the right to terminate this Agreement immediately, upon written notice to the Consultant.

26. **Consent To Treatment.** Contractor will perform no services or provide any treatment to the District in any capacity without first obtaining all required signatures on a Consent To Treatment Form, attached as Exhibit "E".

19. AMENDMENTS

Any amendment to this Agreement will be effective only if in writing and signed by District and the Consultant.

20. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

21. INTERPRETATION

The defined terms used herein are for convenience only and do not limit the contents of this Agreement.

22. VARIATIONS OF PRONOUNS

All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the person or persons or entity may require.

23. AUTHORIZATION FOR AGREEMENT

The execution and performance of this Agreement by District and Consultant have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable will incur no financial obligation s of Consultant and District in accordance with its terms.

24. IMMUNITIES

Nothing in this Agreement is intended to and District does not hereby waive, release or relinquish any right to assert any of the defenses District enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to District as to any claim or action of any person, entity, or individual against District.

25. NON-APPROPRIATION OF FUNDS.

In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the payments for the services are due under this Agreement, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Consultant and any assignee of such occurrence. This Agreement shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under this Agreement relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Consultant or its assignee stop the services on the date of such termination.

26. ADDITIONAL PROVISIONS

Notwithstanding anything to the contrary contained elsewhere herein, District and Consultant hereby covenant and agree:

The compensation, if any, to be paid to Consultant by District is reasonable considering amounts charged by others in the same or similar geographic area for similar services.

The terms and provisions of this Agreement shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Agreement.

IN WITNESS WHEREOF, District has caused its name to be hereunto subscribed by a duly authorized employee thereunto and Consultant has hereunto subscribed his or its name as applicable.

EXECUTED this 13th day of August,2018.

DISTRICT:
McALLEN INDEPENDENT SCHOOL DISTRICT
By: _____
Daniel Vela,
Board of Trustees-President

CONSULTANT:
MCALLEN PREVENTATIVE CARE INSTITUTE

By: Matt Stedman
Matt Stedman (Aug 17, 2018)

Printed Name: Matt Stedman

Title: Managing Partner

Approved as to form:

Atlas Hall & Rodriguez, LLP by: Stephen L. Crain
Stephen L. Crain (Aug 6, 2018)
Stephen L. Crain

EXHIBIT "A"

Definition of Services

Consultant agrees to provide only reasonable, necessary, and allocable services as follows:

Description of Services

A. Contractor will provide the following materials/services:

1. The Contractor shall provide high quality healthcare services to District employees and agree to also provide such services to qualified dependents. These services will include routine Family Practice Medicine by walk-in or appointment and Specialty Care provided by appointment only. Employees may be referred by the District or self refer for medical care.

2. Contractor shall provide the following services under this Agreement:

   Family Practice & Routine Family Care
   Cardiology by Appointment
   Internal Medicine by Appointment
   Work and School Physicals
   Adult and Children Screening Programs
   Drug and Alcohol Testing
   Immunizations
   Prostate Screening
   Workers Compensation
   Minor Office Surgery
   Lab and X-Ray Services
   Health Education
   Hospitalization Referral Services[1]
   Home Health Referrals
   Bilingual Staff
   Imaging Services (as available based on imaging equipment availability)

3. Contractor shall provide to the District employee after required medical treatment the normal doctors "Absence From Work" form. If treatment is under an approved work related Treatment Authorization issued by the District, Contractor shall provide required Texas Workers Compensation Work Status forms to the District and Third Party Claims Administrator within 24 hrs. via facsimile or email.

4. Contractor agrees to a Not to Exceed wait time of 30 minutes Monday-Friday between 8 am and 10 am for single symptom treatment. Compliance with wait time guarantee will be monitored by District based on reporting in accordance with No. 13.

5. Contractor agrees to same day walk in service and same day appointments Monday-Friday between 8 am and 10 am.

6. Contractor will be responsible for all aspects of enrollment of District employees in the Contractor's Clinic at the time of individual patient encounters for such required medical care. In addition, Contractor will provide required forms for enrollment as well as patient education related materials to complement the delivery of routine walk-in and appointments for such medical care.

7. Contractors will provide a program for licensed staff to provide patient education to District employee on a scheduled basis to focus on preventive health issues.

8. Contractor shall provide drug screening and testing as required by District at the Clinic.

[1] Referral Services shall be based on employee choice of providers. In all cases, any referrals shall be made to providers participating in the then current employer health care network first, if available.

9. Contractor shall provide the following routine services:

   Same Day Appointments
   Walk-Ins without Appointment
   Dependent Medical Care
   Maximum Wait time of 30 minutes
   Hospital Admission Referrals
   Health and Wellness Outreach
   District Workers Compensation Provider Network Participation
   Specialty Care by Appointment for Cardiology and Internal Medicine
   Pre-Enrollment of Employees to Expedite Treatment

10. Diagnostic Imaging Services ordered by the Contractor physician for enrolled District employees under this contract will be provided in accordance with Exhibit "B", Fee Schedule.

11. District covered members not seeking routine medical care at the facility but that are referred to Contractor for Diagnostic Imaging only and who show proper identification as a District covered member shall also receive services in accordance with Exhibit "B", Fee Schedule for Diagnostic Imaging Service as described in Exhibit "F".

12. Contractor agrees that discount rates and co-pay structure as outlined in Exhibit "B", Fee Schedule, will be extended to District health plan participants and non enrolled members and dependents during the term of this contract.

13. Contractor agrees to provide District no less than monthly, a mutually agreed upon and HIPAA compliant reporting package for the purpose of tracking utilization, cost and compliance with wait time guarantees, etc.

14. Contractor agrees to develop, with District input, a voluntary survey to be presented to all District members, results of which shall be summarized and reported to the District on a quarterly basis.

B. McAllen ISD will provide the following:

1. Provide District employee seeking medical treatment the Contractor's location. Site maps for this purpose are available and will be provided with an informational brochure.

2. Inform District employees of the requirement to show proof of identification at the time of enrollment and treatment.

3. Inform District employee of discounted rates for co-payments negotiated with District.

EXHIBIT "B"

Fee Schedule

Contractor's Cost for Services

1. All medical services provided by Contractor will be billed directly to third party payers and reimbursed to Contractor.

Compensation for each of the procedures and services listed in the table below shall be paid at 95% of allowable from the fee schedule of District's chosen medical carrier. The medical carrier fee schedule utilized will be the fee schedule which applies to the McAllen area and for the products utilized by the District (such as PPO, etc.). If applicable, if the chosen medical carrier has an alternate payment rule for mid-level providers (such as nurse practitioners, etc.), contractor agrees to be paid according to these rules but payment shall not be less than 85% of the medical carriers applicable fee schedule.

The fee schedule utilized will be in force beginning on the effective date of this Agreement and will not change until the end of this Agreement term.

Description of Services (Individual or ranges of CPT codes or HCPCS codes or other description of services)
E&M (99201-99499)
Surgery (10000-69999)
Imaging (70000-79999)
Medicine (90000-99200,99500-99999)

For covered services not included within "Description of Services" above, compensation for covered services shall be based on the less of (1) billed charges or (2) the fee for such service per the then current medical carrier fee schedule.

Contractor agrees to meet with District within 3 to 6 months of this Agreements effective date to review claim payments and thereafter as necessary to monitor claims and utilization. This meeting will be designed to determine 1.) if claims are paying according to contract and 2.) if the cost for covered services not included within the "Description of Services" table above are a major cost driver or not. If it is determined that these services are a major cost driver, Contractor agrees to work with District to make necessary adjustments that align the cost for covered services not included within the "Description of Services" with the cost of the covered services.

If there is a discrepancy on payment terms between this Agreement and any other Agreement, be it medical carrier or other, the payment terms found in this Agreement shall prevail and apply. At no time will reimbursement under this Agreement be more than what reimbursement would be under a direct contract between the District and insurance carrier(s) or third party administrators chosen medical carrier.

Contractor agrees to accept the compensation in accordance with the above as payment in full for medical services rendered to eligible persons. Contractor agrees that eligible participants of District's

health plan shall only be liable for the actual copayments as listed in No. 2 below for medical services rendered.

The District may, at its own expense, examine and audit records maintained pursuant to the Agreement for compliance with the terms as frequently as quarterly. Such examinations and audits may be conducted at a mutually convenient time and during Contractor's normal business hours. Contractor shall cooperate in good faith with any examinations or audits. Contractor shall timely, within thirty (30) days, reimburse the District for payments determined to have exceeded the allowable.

Contractor agrees to maintain true and correct records for a period of seven (7) years from the date of each claim under this Agreement or such longer period as may be required by law.

2. Contractor agrees that discounting of copays and waiving of coinsurance and deductibles, if applicable, complies with all applicable rules.
During the term of this Agreement, total co-pay for members of the District health plan shall be $5.

EXHIBIT “C”

INSURANCE COVERAGE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/18/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

THE KLEMENT AGENCY
P.O. BOX 820
PROSPER TX 75078

CONTACT NAME: Greg Klement
PHONE (A/C, No, Ext): (972) 562-7455 FAX (A/C, No): (972) 562-7129
E-MAIL ADDRESS: greg@klementagency.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : LIBERTY MUTUAL	
INSURER B : EVANSTON INSURANCE	
INSURER C : TRAVELERS	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

MCALLEN PREVENTIVE CARE INSTITUTE P.A.
HEALTH CLIMB INSTITUTE, LLC
500 S BICENTENNIAL BLVD
MCALLEN TX 78501-

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	X	X	BKS1956800612	07/17/2018	07/17/2019	EACH OCCURRENCE	$ 1,000,000
B	CLAIMS-MADE X OCCUR	X	X	SM922958	11/11/2017	11/11/2018	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
	X PROFESSIONAL						MED EXP (Any one person)	$ 15,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:						PROFESSIONAL	$ 1M/3M LIMIT
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N		X	UB-6K040036-18	05/20/2018	05/20/2019	X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N / A						E.L. EACH ACCIDENT	$ 1,000,000
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
A	PROPERTY	X	X	BKS1956800612	07/17/2018	07/17/2019	CONTENTS (2 LOC)	3,389,623
							DEDUCTIBLE	1,000
							BUSINESS INCOME	1,020,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER IS LISTED AS ADDITIONAL ADDITIONAL INSURED.

CERTIFICATE HOLDER

MCALLEN INDEPENDENT SCHOOL DISTRICT
4309 WARRIOR DR
BUILDING C
MCALLEN TX 78501-

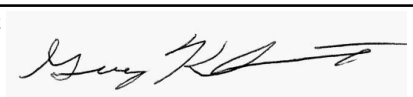
Fax: ( ) -

CANCELLATION

AI 110830

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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EXHIBIT "D"
COMPLIANCE AGREEMENT

This Compliance Agreement ("Agreement") is made effective by and between McAllen Independent School District ("District") and McAllen Preventative Care Institute ("Consultant").

WHEREAS, both parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Regulation") and other regulations issued under 45 CFR parts 142 and 160-164 pursuant to the Health Insurance Portability and Accountability Act of 1996 (collectively, "HIPAA"). The parties hereby agree as follow:

1. Definitions
   a. All terms in this agreement will have the same meaning as defined in the HIPAA Privacy Standards found in 45 CFR Part 160 and Part 164, Subparts A and E.
2. Permitted Uses and Disclosures
   a. Services: Consultant provides services ("Services") for District that involve the use and disclosure of Protected Health Information. Except as otherwise specified herein, Consultant may make any and all uses of Protected Health Information necessary to perform its obligations to District. All other uses not authorized by this Agreement or required by Law are prohibited.
   b. Business Activities of Consultant: Unless otherwise limited herein, Consultant may disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Consultant, provided that the disclosures are in compliance with HIPAA and any applicable state laws or regulations governing health information.
3. Use and Disclosure of Protected Health Information
   a. Responsibilities of Consultant: With regard to its use and/or disclosure of Protected Health Information, Consultant hereby agrees to do the following:
      i. Consultant agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
      ii. Consultant agrees to use appropriate safeguards to prevent use of disclosure of the Protected Health Information other than as provides for by this Agreement.
      iii. Consultant agrees to mitigate, to the extent practicable, and harmful effect that is known to Consultant of a use or disclosure of Protected Health Information by Consultant in violation of the requirements of this Agreement.
      iv. Consultant agrees to report to District any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
      v. Consultant agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Consultant on behalf of District agrees to the same restrictions and conditions that apply through this Agreement to Consultant with respect to such information.
      vi. Consultant agrees to provide access, at the request of District, and in the time and manner agreed to by both the Consultant and the District, to Protected Health Information in a designated record set, to District, or as directed by District, to an individual in order to meet the requirements under 45 CFR 164.524.
      vii. Consultant agrees to make any amendment(s) to Protected Health Information in a designated record set that the District directs or agrees to pursuant to 45 CFR 164.526 at the request of District, and in the time and manner agreed to by both the Consultant and the District.
      viii. Consultant agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Consultant on behalf of District available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Consultant's compliance with the Privacy Rule.

ix. Consultant agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Consultant to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

b. Responsibilities of District: With regard to the use and/or disclosure of Protected Health Information by Consultant, District hereby agrees to do the following:
   i. District shall not request Consultant to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by District.
   ii. Notify Consultant, in writing and in a timely manner, of any arrangements permitted or required of District under HIPAA that may impact in any manner the use and/or disclosure of Protected Health Information by Consultant under this Agreement.

4. Term and Termination
   a. Term: This Agreement shall be for a term identical to that described in section 13.a of the Professional Service Agreement to which this Compliance Agreement is attached.
   b. Termination by Breach: If District determines that Consultant has violated a material term of this Agreement, District will give the Consultant an opportunity to cure the violation. If Consultant does not cure a violation of this Agreement to the satisfaction of District, District may terminate this Agreement with a thirty (30) day written notice to Consultant.
   c. Effects of Termination: Disposal of Protected Health Information. Upon termination of this Agreement, Business Associate shall return to District or destroy all Protected Health Information that Consultant obtained or maintained pursuant to this Agreement on behalf of District. If the parties agree at that time that the return or destruction of Protected Health Information is not feasible, Consultant shall extend the protections provided under this Agreement to such Protected Health Information.

5. Miscellaneous
   a. Amendment: The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for District to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
   b. Survival: The respective rights and obligations of Consultant under this Agreement shall survive the termination of this Agreement.
   c. Interpretation: Any ambiguity in this Agreement shall be resolved to permit District to comply with the Privacy Rule.

EXHIBIT “E”

Consent To Treatment Form

Registration Form				PCP:
PATIENT INFORMATION				
Patient's last name: First Name Middle				
Birth Date:	Social Security No:	Age:	Sex:	Marital Status: Single ☐ Mar ☐ Div ☐ Sep ☐ Wid ☐
Street Address:		City/State		Zip Code
Cell No:		Home No:		
EMPLOYER NAME				
PHONE #				
IN CASE OF EMERGENCY	Name of a local friend or relative (not living at same address)			
Name:		Phone No:		
☐ **Private Ins.** ☐ **Medicare** ☐ **Medicaid** ☐ **Private Pay** ☐ **Workers Comp.**				
INSURANCE INFORMATION		☐ Is this a primary insurance		
Insurance Name:		ID#		Relationship:
Name of insured Person:		DOB:		SSN#:
2nd INSURANCE INFORMATION		☐ Is this a secondary insurance		
Insurance Name:		ID#:		Relationship:
Name of Insured Person:		DOB:		SSN#:

Assignment of Benefits / Treatment & Patient Agreement

The above information is true to the best of my knowledge. I understand payment for services are due when services are rendered. I understand that I am financially responsible for any copays / deductibles or portions not covered by my insurance. I authorize my insurance benefits to be paid directly to the physician. I also give McAllen Preventive Care Institute and Physicians my consent for treatment. I understand that this treatment consent applies to this visit, all future visits, and all radiological services.

Please be advised that services performed may incur **other third-party charges** such as: radiologist reading, laboratory, physical therapy, and electrocardiography reading, etc.

Acknowledgment of Notice of Privacy Practice

I have been presented with a copy of the Notice of Privacy Practices for the office of McAllen Preventive Care Institute, detailing how my information may be used and disclosed as permitted under federal and state law. I have read the about acknowledgment and agreements, and fully understand the same.

_____ _____

Patient, Parent or Guardian Signature Date

_____ _____

PRINT Patient, Parent or Guardian Name Relationship to Patient

_____ _____

Witness Date

**********FOR OFFICE USE ONLY**********

_____ _____

Office Staff Signature Date

Forma de Registro				Dr:	
INFORMACION DEL PACIENTE					
Apellido:		Nombre:			Inicial:
Fecha de Nacimiento:	No. Seguro Social:	Edad:	Sexo:	Estado Civil: Soltero☐ Casado☐ Div☐ Sep ☐ Viudo ☐	
Dirección :			Ciudad/Estado:		Codigo Postal:
Tel/ Cellular:			Tel/ Casa:		
EMPLEADOR:					
TELEFONO:					
EN CASO DE EMERGENCIA	Nombre de algun pariente (que no viva en la misma dirección)				
Nombre:			Telefono:		
☐ **Seguro Gastos Medicos** ☐ **Medicare** ☐ **Medicaid** ☐ **Efectivo** ☐ **Otro**					
INFORMACION DEL SEGURO			☐ Es seguro primario?		
Nombre de Empresa:			# de ID:		Relación:
Nombre de la persona asegurada:			Fecha de Nacimiento:		# Seguro Social:
INFORMACION DEL SEGURO SECUNDARIO			☐ Es seguro secundario?		
Nombre de Empresa:			# de ID:		Relación:
Nombre de la persona asegurada:			Fecha de Nacimiento:		# Seguro Social:

Asignación de Beneficios / Autorización de Tratamiento

La información anterior es verdadera según mi leal saber y entender. Entiendo que el pago de los servicios vence cuando se presten los servicios. Entiendo que soy financieramente responsable de cualquier copago / deducible o parte no cubierta por mi seguro. Autorizo que los beneficios de mi seguro se paguen directamente al médico. También doy mi consentimiento para el tratamiento de McAllen Preventive Care Institute y sus médicos. Entiendo que este consentimiento de tratamiento se aplica a esta visita, a todas las visitas futuras y a todos los servicios radiológicos.

Tenga en cuenta que los servicios prestados pueden incurrir en otros cargos de terceros tales como: lectura del radiólogo, laboratorio, fisioterapia y lectura de electrocardiografía, etc.

Aviso de Privacidad

Reconozco que se me ha presentado una copia del Aviso de prácticas de privacidad para la oficina del McAllen Preventive Care Institute, que detalla cómo mi información puede ser utilizada y divulgada según lo permitido por las leyes federales y estatales. He leído sobre el reconocimiento y los acuerdos, y entiendo completamente lo mismo.

_____ _____

Firma del Paciente, Padre o Guardian Fecha

_____ _____

Nombre del Paciente, Padre o Guardian Relación al Paciente

_____ _____

Testigo Fecha

**********FOR OFFICE USE ONLY**********

_____ _____

Office Staff Signature Date

EXHIBIT “F”

Diagnostic Imaging Services

Consultant agrees to provide, at the sole discretion of Consultant, the following Imaging Services based on availability of imaging equipment (availability of imaging equipment includes but is not limited to equipment maintenance, etc.):

Magnetic Resonance Imaging (MRI)

Computed Tomography (CT or CAT)

Ultrasound

Plain Film X-Ray

Gamma Camera

EXHIBIT "G"

ASSOCIATE STATEMENT AGREEMENT (IF REQUIRED)

I, _____, have reviewed and acknowledged receipt of the Agreement dated _____ between **MCALLEN INDEPENDENT SCHOOL DISTRICT** and _____ and, in consideration of the undersigned's selection to perform Services under the Agreement, the undersigned agree to be bound by all its terms and conditions, and any amendments to the Agreement which may be executed in the future, with the same effect as if the undersigned had personally executed such Agreement or amendments.

_____ _____

Date Signature of Associate

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Interlocal Agreement No. 2021-149 with The University of Texas Rio Grande Valley on behalf of UT Health RGV Clinical Laboratory

REFERENCE: Goal 4, Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District is seeking a Contract to provide COVID-19 testing services as part of the District's Employee COVID - 19 response plan.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

In light of the COVID-19 pandemic and the need to quickly test for suspected COVID-19 infections, the District needs to be in a position to direct employees to a provider that can perform COVID-19 Polymerase Chain Reaction (PCR) testing with turn-around times of 24-48 hours.

LLEGAL REVIEW:

The Agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

The COVID-19 testing expenses will be paid through the health plan fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Interlocal Agreement No. 2021-149 with The University of Texas Rio Grande Valley on behalf of UT Health RGV Clinical Laboratory for a one (1) year term through October 12, 2021.

SUBMITTED BY: Andres Silva (Oct 5, 2020 16:08 CDT)

SUPERVISOR:

For further information contact:
Name: Andres Silva
Office: (956) 618-6007
eMail: andres.silva@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

INTERLOCAL COOPERATION CONTRACT

This **Interlocal Cooperation Contract** (**Contract**) is entered into effective **October 13, 2020** (**Effective Date**), by and between Contracting Parties pursuant to authority granted in and in compliance with Chapter 791, *Government Code*.

CONTRACTING PARTIES:

Receiving Party: **McAllen Independent School District, a local government of the State of Texas ("Client").**

Performing Party: **The University of Texas Rio Grande Valley, an agency of the state of Texas and institution of higher education, for and on behalf of UT Health RGV Clinical Laboratory ("UTRGV")**.

PURPOSE:

The purpose of this Contract is to obtain the services of Performing Party to provide diagnostic laboratory testing services for the Receiving Party's employees ("Patients"). This Contract will increase the efficiency and effectiveness of Contracting Parties.

STATEMENT OF SERVICES TO BE PERFORMED:

Performing Party will perform the following services (**services**):

1. Diagnostic Laboratory Testing.

OBLIGATIONS OF THE PARTIES:

OBLIGATIONS OF UTRGV:

UTRGV will perform the following as part of its Services to Client under this Agreement:

a. Provide Services offered by UTRGV's CLIA-certified lab as specified in the attached Exhibit A, Tests and Service Fees.
b. Provide only necessary supplies for the sole purpose of storing, obtaining and transporting specimens to be tested by UTRGV, including lab bags to be used by Client to send specimens.
c. Provide daily pick-up service during business hours at an agreed upon time and location to collect specimens.
d. Provide Client with hard-copy laboratory requisition forms.
e. Use best efforts to process all specimens within 2 business days of receipt by UTRGV.
f. Report test results to Client via fax, email or through an EMR, if available, the same day results become available. If Client's EMR is used for such communication, UTRGV agrees to ensure that Client's policies and procedures are followed with regard to access to and use of the EMR system and shall promptly report to the Client any privacy or security incidents.
g. Use customary billing practices to bill Client for all tests performed for Client's Patients.
h. Provide Client the name and contact information of UTRGV employee who will be the contact person for any customer service or laboratory service related issues.
i. Continue and maintain certifications and qualifications as required by both federal and state law to provide such Services to Client Patients, including all CLIA rules and regulations.
j. Represent, warrant and covenant that during the term of the Agreement, UTRGV, and each of its employees, contractors and/or agents providing services hereunder have not been: (i) convicted of a criminal offense that falls within the ambit of 42 USC § 1320a-7(a) (i.e., any conviction relating to the Medicare or Medicaid program, patient abuse, felony conviction relating to health care fraud or felony conviction relating to controlled substances), or (ii) excluded, debarred, suspended or otherwise ineligible to participate in the federal or state health care programs or in federal procurement or non-procurement programs. In the event that UTRGV or any of its employees, contractors and/or agents are subject to the actions set forth above, Client may terminate this Agreement immediately.

OBLIGATIONS OF CLIENT

Client is responsible for the following under this Agreement:

a. Shall specify the laboratory test to be performed by UTRGV hereunder on a laboratory requisition form provided by UTRGV and shall include ordering provider and patient demographic sheet.
b. Shall provide patient and facility demographic information required for mandatory state and federal reporting purposes in an excel format provided by UTRGV, attached hereto as Exhibit B which may be updated with notification from time to time, submitted each day laboratory test specimens are sent to UTRGV.
c. Shall provide specimen in identified container labeled with patient name and date of birth, as specified for ordered laboratory test, placed in specimen bag with demographic sheet and UTRGV laboratory requisition.
d. Should a specimen be received in the UTRGV laboratory in a broken container, spilled specimen, or nonsufficient sample, Client will obtain repeat specimen for laboratory testing as ordered.
e. Shall make payment directly to UTRGV for Services provided hereunder and bill third party or patient for Services.
f. Shall use supplies provided by UTRGV only for collection and testing of specimens sent to UTRGV. Unused supplies provided by UTRGV, including but not limited to lab bags, test kits, and swabs, shall be returned to UTRGV upon request.
g. Provide UTRGV with the name and contact information of Client employee who will be the contact person for test results and addressing contract related issues.
h. Provide UTRGV with a fax number for providing test results.
i. Shall not make any referrals or any payments under this Agreement that are prohibited by law.

WARRANTIES:

Receiving Party warrants (1) the services are necessary and authorized for activities properly within its statutory functions and programs; (2) it has authority to contract for the services under authority granted in Chapter 791, *Government Code*; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Contract, and (4) the representative signing this Contract on Receiving Party's behalf is authorized by its governing body to do so.

Performing Party warrants (1) it has authority to perform the services under authority granted in Chapter 65 and 79, *Texas Education Code* and Chapter 791, *Texas Government Code*; (2) it has all necessary power and has received all necessary approvals to execute and deliver this Contract, and (3) the representative signing this Contract on Performing Party's behalf is authorized by its governing body to do so.

PAYMENT:

UTRGV will bill Client directly for all testing performed based on information provided by Client at the agreed upon fee listed in Exhibit A attached hereto (the "Service Fees").

Receiving Party will remit payments to Performing Party for services satisfactorily performed in accordance with Chapter 2251, *Government Code* (Texas Prompt Payment Act).

Payments made under this Contract (1) are based on cost recovery, (2) will fairly compensate Performing Party for the services performed, and (3) will be made from current revenues available to Receiving Party.

TERM:

The term of this Contract begins on the Effective Date and expires on the one (1) year anniversary of the Effective Date, unless sooner terminated in accordance with the terms hereof.

NOTICES:

Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications provided or permitted under this Contract, will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in

the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to Receiving Party: McAllen Independent School District
Jose A. Gonzalez
2000 N. 23rd St.
McAllen, TX 78501
Attention : Purchasing Services

If to Performing Party: The University of Texas Rio Grande Valley
1201 W. University Dr.
Edinburg, TX 78539
Attention: EVP, Health Affairs

or other person or address as may be given in writing by either party to the other in accordance with this Section.

TERMINATION:

In the event of material failure by a Contracting Party to perform its duties and obligations in accordance this Contract, the other party may terminate this Contract upon sixty (60) days' advance written notice of termination setting forth the nature of the material failure; provided that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the sixty-day period.

Either Party may terminate this Contract without cause upon sixty (60) days' advance written notice of termination to the other Party**.**

OTHER PROVISIONS:

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Performing Party under this Contract may be applied directly toward any debt or delinquency Performing Party owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.

Venue; Governing Law. Hidalgo County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

Entire Agreement; Modifications. This Contract supersedes all prior agreements, written or oral, between Performing Party and Receiving Party and will constitute the entire agreement and understanding between the parties with respect to its subject matter. This Contract and each of its provisions will be binding on the parties, and may not be waived, modified, amended or altered, except by a writing signed by Receiving Party and Performing Party.

Loss of Funding. Performance by a Contracting Party of its duties and obligations under this Contract may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by that Contracting Party's governing board. If Legislature fails to appropriate or allot necessary funds, or a Contracting Party's governing board fails to allocate necessary funds, then Contracting Party that loses funding may terminate this Contract without further duty or obligation. Contracting Parties agree acknowledge that appropriation, allotment, and allocation of funds are beyond the Contracting Parties' control.

State Auditor's Office. Contracting Parties understand acceptance of funds under this Contract constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. Sections 51.9335(c), 73.115(c) and 74.008(c), *Education Code*). Contracting Parties agree to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contracting Parties will include this provision in all contracts with permitted subcontractors.

Assignment. This Contract is not transferable or assignable except upon written approval by Contracting Parties.

Severability. If any one or more of the provisions of this Contract will for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality or unenforceability will not affect any other provision, and this Contract will be construed as if the invalid, illegal, or unenforceable provisions had never been included.

Public Records. It will be the independent responsibility of Receiving Party and Performing Party to comply with Chapter 552, *Government Code* (**Public Information Act**), as it applies to the Contracting Parties' respective information. Receiving Party is not authorized to receive public information requests or take any action under the Public Information Act on behalf of Performing Party. Likewise, Performing Party is not authorized to receive public information requests or take any other action under the Public Information Act on behalf of Receiving Party.

HIPAA Requirements. Both parties agree to comply with the applicable provisions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d through d-8, as amended from time to time ("HIPAA"), and the requirements of any regulations promulgated there under including, without limitation, the federal privacy regulations as contained in 45 CFR Part 164 (the "Federal Privacy Regulations") and the federal security standards as contained in 45 CFR Part 142 (the "Federal Security Regulations"). Both parties acknowledge that each party constitutes a "covered entity," as that term is defined at 45 CFR §164.103, and both parties are engaged in "covered functions," as that term is defined at 45 CFR § 164.501. Both parties agree not to use or further disclose any "protected health information," as defined at 45 CFR §164.504, or "individually identifiable health information," as defined at 42 U.S.C. §1320d (collectively, the "Protected Health Information"), concerning a patient other than as permitted by the provisions of this Agreement and the requirements of HIPAA and the regulations promulgated pursuant to HIPAA, including without limitation the Federal Privacy Regulations and the Federal Security Regulations. Both parties shall implement appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for by this Agreement. Either party shall promptly report to the other party any use or disclosure of protected health information not in accordance with this Agreement or in violation of HIPAA, the Federal Privacy Regulations, or the Federal Security Regulations of which that party becomes aware. In the event either party, with the prior approval of the other party in writing, contracts with any other parties or agents to whom the party furnishes protected health information received from the party, that party shall include provisions in such agreements whereby that party and the other party or agent agree to the same restrictions and conditions that apply to that party with respect to such protected health information. Either party shall return to the other party or properly dispose of any protected health information in accordance with federal and state law and regulations after the expiration or termination of this Agreement. Either party shall make its internal practices, books, and records relating to the use and disclosure of protected health information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations and the Federal Security Regulations. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by either party by virtue of this paragraph. Any breach of this paragraph shall constitute a material breach upon which termination of this Agreement may be based.

Executed effective on the Effective Date by the following duly authorized representatives of Contracting Parties:

RECEIVING PARTY:
McAllen Independent School District

_____

By: _____
Name: Conrado Alvarado
President, Board of Trustees

Date: _____

PERFORMING PARTY:
The University of Texas Rio Grande Valley

_____

John H. Krouse, MD, PhD, MBA
Dean, School of Medicine
Executive Vice President, Health Affairs

Date: _____

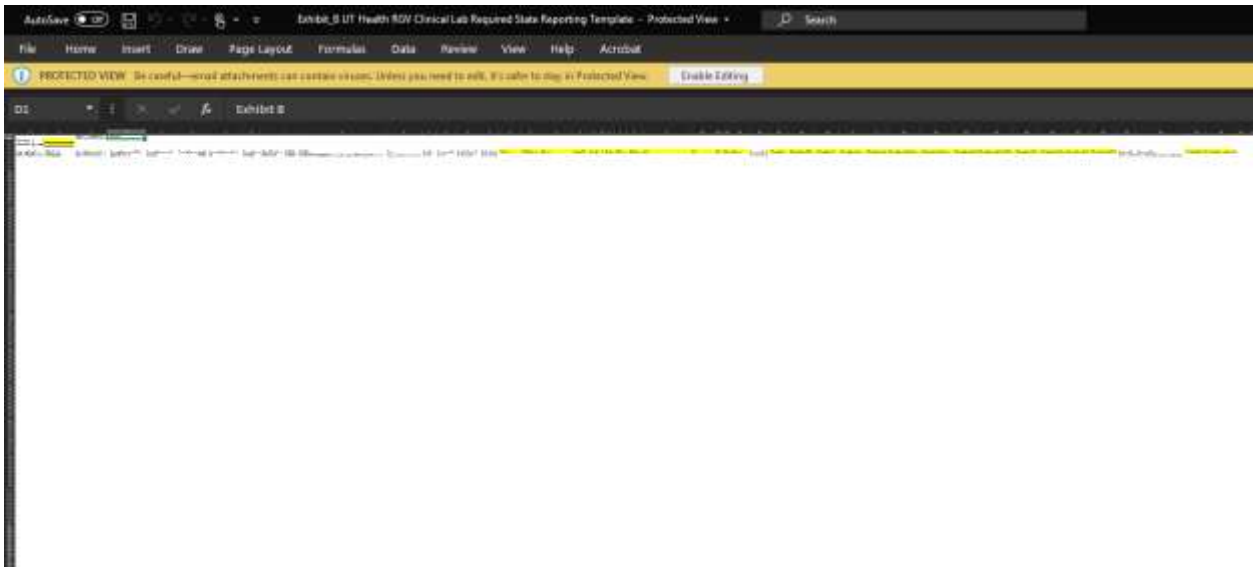
Approved as to form:
Atlas, Hall, & Rodriguez LLP
By: Stephen L. Crain
Stephen L. Crain (Sep 27, 2020 10:08 CDT)
Stephen Crain

Exhibit A
Service Fees

Test Type	Test Description	Pricing
PCR	COVID-19 by Real Time-Polymerase Chain Reaction (RT-PCR) with Test Kit	$110/test
PCR	COVID-19 by Real Time-Polymerase Chain Reaction (RT-PCR) without Test Kit	$100/ test
Antibody	SARS-CoV-2 IgG: with blood draw	$75/test
Antibody	SARS-CoV-2 IgG: without blood draw	$65/test

Exhibit B
UT Health RGV Clinical Lab Required State Reporting

Exhibit B
UT Health RGV Clinical Lab Required State Reporting



*Not to size
**Electronic format will be provided separately with agreement.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Competitive Sealed Proposal No. 2021-112 Location 1 - Castaneda Elementary School and Location 2 - Navarro Elementary School Fire Alarm Upgrade(s)

REFERENCE: Goal 3 - Facility Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for fire alarm upgrades at various schools.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Seven hundred eighty-two (782) contractors were invited to submit proposals, and four (4) contractors responded. On September 16, 2020, the evaluation committee, comprised of Ruben Treviño, Executive Director of Facilities Maintenance & Operations; Melissa Ortiz, Project Manager for Facilities Maintenance & Operations; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Purchasing Services Coordinator; and Sandra Zamora, Senior Buyer, evaluated the proposals and is recommending that the Board award this contract to JSJ Security and Fire Inc. dba SafeGuard Security & Fire from Mission, TX, the highest ranked contractor. Administration is currently in negotiations with potential contractor.

LEGAL REVIEW:

A draft copy of the AIA contract is attached. The AIA contract is pending receipt of payment and performance bonds and final legal review.

BUDGETARY CONSIDERATIONS:

The contract price for this project is $201,696.00, which includes a contingency in the amount of $10,000.00 per school location. Funds for this project are available through the Capital Projects Fund, using budgeted funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Competitive Sealed Proposal No. 2021-112 Location 1 - Castaneda Elementary School and Location 2 - Navarro Elementary School Fire Alarm Upgrade(s) to JSJ Security and Fire Inc. dba SafeGuard Security & Fire.

SUBMITTED BY: _____ **SUPERVISOR:** Arely Benavides (Oct 6, 2020 17:29 CDT)

For further information contact:
Name: Ruben Treviño
Office: (956) 632-3200
email: ruben.trevino@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

McALLEN INDEPENDENT SCHOOL DISTRICT

Competitive Sealed Proposal (CSP) 2021-112 Location 1 - Castaneda Elementary School and Location 2 - Navarro Elementary School Fire

	Competitive Sealed Proposal (CSP) 2021-112 Location 1 - Castaneda Elementary School and Location 2 - Navarro Elementary School Fire Alarm Upgrade(s)	Max. Pts	LMH & LMH, LLC dba Absolute Services	Alan Yoder Enterprises Inc. dba Superior Alarms	Circle Industries Inc.	JSJ Security and Fire Inc. dba SafeGuard Security & Fire
	Vendor:					
	Rank➡➡		**2**	**3**	**4**	**1**
	Total Points➡		72.4	61.9	52.9	90.5
1	**AMOUNT/BASE BID (CONTINGENCY INCLUDED)**		**$252,600.00**	**$357,416.00**	**$367,699.13**	**$201,696.00**
	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	47.9	33.9	32.9	60.0
2	**List three (3) references** of current or past projects completed within the past five (5) years of similar scope and size • 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).	3	0	1	3	3
	Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)		Missing	1 same scope/1 same size		
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	0	1	1	1
			Missing			
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	1	0	1
			Missing		No prev work district	
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	1.5	2	3	1
	Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)		3 same scope/0 same size	2 same scope/2 same size		1 same scope/1 same size
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	2	2	0	0.5
	Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)		3 same scope/1 same size	2 same scope/2 same size	0 same scope/0 same size	1 same scope/0 same size
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	3	1.5	3
					Listed-no references	
8	List your company's history of **on-time project completion** (based on responses stated in questions 4-6)	3	3	3	0	3

McALLEN INDEPENDENT SCHOOL DISTRICT

Competitive Sealed Proposal (CSP) 2021-112 Location 1 - Castaneda Elementary School and Location 2 - Navarro Elementary School Fire

	Competitive Sealed Proposal (CSP) 2021-112 Location 1 - Castaneda Elementary School and Location 2 - Navarro Elementary School Fire Alarm Upgrade(s)	Vendor:	LMH & LMH, LLC dba Absolute Services	Alan Yoder Enterprises Inc. dba Superior Alarms	Circle Industries Inc.	JSJ Security and Fire Inc. dba SafeGuard Security & Fire
					Blank	
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** (2017-2019**).**	3	3	0	0	0
				No Submittal	No Submittal	No Submittal
11	**Attach "OSHA Form 300 Log** of Work-Related Injuries and Illnesses" for the **last three (3) years (2017-2019)** 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	1	1	3	2
			2020	2018		2016, 2017, 2018 (2019/2020 missing)
12	**Attach** your company's **safety program manual and/or procedures for current and new employees**.	2	2	2	0	2
					No Submittal/Quality Control	
13	**State the frequency** safety inspections are conducted for projects.	1	1	1	1	1
14	**Attach** your company's **drug/alcohol prevention policy and/or procedures.**	1	1	1	0	1
					No Submittal	
15	**Select** the correct statement: • 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 the individuals who will be assigned for the duration of the project (i.e., Project Manager, Assistant Project Manager, Project Superintendent, Assistant Project Superintendent and MEP Quality Control Specialist). Include their **job titles, job descriptions/responsibilities, and attach details listed in section 11.16 of the CSP.**	2	1	2	1.5	2
			No JD		missing JD 1/Listed 2 individuals	

McALLEN INDEPENDENT SCHOOL DISTRICT

Competitive Sealed Proposal (CSP) 2021-112 Location 1 - Castaneda Elementary School and Location 2 - Navarro Elementary School Fire

	Competitive Sealed Proposal (CSP) 2021-112 Location 1 - Castaneda Elementary School and Location 2 - Navarro Elementary School Fire Alarm Upgrade(s)	Vendor:	LMH & LMH, LLC dba Absolute Services	Alan Yoder Enterprises Inc. dba Superior Alarms	Circle Industries Inc.	JSJ Security and Fire Inc. dba SafeGuard Security & Fire
17	**Attach a letter from your surety** company addressing the following points. **1) Surety Company** • 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** • Maximum bonding limit for the contractor • Aggregate/total available limit of coverage. • Years doing business with surety	2	1	1	2	2
			No Letter Provided	No Letter Provided		
18	**List projects** that your company **currently** has **in progress**. For each project listed address the following points: • 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
19	**Attach** a **CURRENT** financial statement • 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	0	0	0	2
			No submittal/upon request	No Submittal	No submittal/upon request	
20	Select your company's Dun & Bradstreet risk indicator and attach documentation (risk indicator 1 – 4): (1 pt.)	1	1	1	0	0
					Blank	Blank
19	**Bid Bond**	1	1	1	1	1
20	**Attach** a proposed **project schedule/timeline**	2	0	2	0	2
			No submittal/upon request		No submittal/upon request	
	Score based on other PRICE	60	*2044.5*	*2046*	*20*	*30.5*
	Score based on OTHER POINTS	40	*47.91*	*33.86*	*32.91*	*60.00*
	Total Points ➡	100	2092.4	2079.9	52.9	90.5

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.

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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.

[X] 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.

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§ 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

§ 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

§ 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

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

Item	Price
Contingency	$[ ]

§ 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.)

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[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 Governmentt 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:

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§ 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:

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(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 nonconformingWork 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

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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

[X] 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

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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.

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§ 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")

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(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:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

CONTRACTOR:

[ ]

By: _____
Printer Name:
Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

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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

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User Notes: (1413695541)

EXHIBIT B

to

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

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EXHIBIT C

to

(Table deleted)

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

Payment Bond

and

Performance Bond

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(Table deleted)

EXHIBIT D

to

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

Contractor's Insurance Certificates

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EXHIBIT E

to

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

Plans and/or Specifications

(Table deleted)

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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)

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3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

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7 CHANGES IN THE WORK

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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.

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§ 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 sale 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.

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§ 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.

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§ 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

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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

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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

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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.

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§ 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)

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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

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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.

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§ 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 I 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 ensuing 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.

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§ 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

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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.

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§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.

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§ 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

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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.

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§ 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.

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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

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.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.

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§ 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.

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§ 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

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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

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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. Contactor 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

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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

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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.

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§ 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.

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§ 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 Contactor 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.

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§ 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

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.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

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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.

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§ 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 Wavier 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);

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.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	$2,000,000.00 per occurrence
Property Damage	$2,000,000.00 aggregate

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.

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§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;

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.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,

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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 11or 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

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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

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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.

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§ 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.

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§ 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.

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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

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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.

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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.

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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.

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§ 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:	**CONTRACTOR:**
McALLEN INDEPENDENT SCHOOL DISTRICT	[_____]
By: _____	By: _____ Printed Name: _____ Title: _____
_____ Date	_____ Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)

DRAFT

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Competitive Sealed Proposal No. 2021-127 Location 1 –Cathey Middle School and Location 2- Jackson Elementary School Fire Alarm Upgrade(s)

REFERENCE: Goal 3 - Facility Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for fire alarm upgrades at various schools.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Seven hundred eighty-two (782) contractors were invited to submit proposals, and five (5) contractors responded. On September 16, 2020, the evaluation committee, comprised of Ruben Treviño, Executive Director of Facilities Maintenance & Operations; Melissa Ortiz, Project Manager for Facilities Maintenance & Operations; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Purchasing Services Coordinator; and Sandra Zamora, Senior Buyer, evaluated the proposals and is recommending that the Board award this contract to Protech Integration Systems Inc. dba Protech Security Systems from Mercedes, TX, the highest ranked contractor. Administration is currently in negotiations with potential contractor.

LEGAL REVIEW:

A draft copy of the AIA contract is attached. The AIA contract is pending receipt of payment and performance bonds and final legal review.

BUDGETARY CONSIDERATIONS:

The contract price for this project is $195,000.00, which includes a contingency in the amount of $10,000.00 per school location. Funds for this project are available through the Capital Projects Fund, using budgeted funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Competitive Sealed Proposal No. 2021-127 Location 1 –Cathey Middle School and Location 2- Jackson Elementary School Fire Alarm Upgrade(s) to Protech Integration Systems Inc. dba Protech Security Systems .

SUBMITTED BY: _____ **SUPERVISOR:** Arely Benavides (Oct 6, 2020 17:28 CDT)

For further information contact:
Name: Ruben Treviño
Office: (956) 632-3200
email: ruben.trevino@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

MCALLEN INDEPENDENT SCHOOL DISTRICT

Competitive Sealed Proposal No. 2021-127 CSP Location 1 - Cathey Middle School and Location 2 - Jackson Elementary School Fire Alarm Upgrade(s)

	Competitive Sealed Proposal No. 2021-127 CSP Location 1 - Cathey Middle School and Location 2 - Jackson Elementary School Fire Alarm Upgrade(s) Vendor:		LMH & LMH, LLC dba Absolute Services	Alan Yoder Enterprises, Inc. dba Superior Alarms	Circle Industries	Protech Integration Systems Inc. dba Protech Security Systems	JSJ Security & Fire dba Safeguard Security & Fire
	Rank➡➡		**3**	**4**	**5**	**1**	**2**
	Total Points➡		60.7	52.6	44.1	81.5	74.0
1	**AMOUNT/BASE BID (CONTINGENCY INCLUDED)**	Max. Pts1	**$363,075.00**	**$476,269.00**	**$484,871.06**	**$195,000.00**	**$268,661.00**
	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	32.2	24.6	24.1	60.0	43.5
2	**List three (3) references** of current or past projects completed within the past five (5) years of similar scope and size • 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).	3	3	1	3	3	3
	Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)			1 same scope/1 same size			
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	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	1	0	0	1
			No prev work district		No prev work district	No prev work district	
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	1.5	2	3	0	1
			3 same scope/0 same size	2 same scope/2 same size		None Indicated	1 Same Scope/1 Same Size
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	2	2	0	0	0.5
	Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)		3 same scope/1 same size	2 same scope/s same size	listed k-12	0 same scope/0 same size	1 Same Scope/0 Same Size
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	3	1.5	1.5	3
					Listed-no letters	Listed-no letters	
8	List your company's history of **on-time project completion** (based on responses stated in questions 4-6)	3	3	3	0	0	3
					Blank	Blank	

Competitive Sealed Proposal No. 2021-127 CSP Location 1 - Cathey Middle School and Location 2 - Jackson Elementary School Fire Alarm Upgrade(s)

	Competitive Sealed Proposal No. 2021-127 CSP Location 1 - Cathey Middle School and Location 2 - Jackson Elementary School Fire Alarm Upgrade(s)	Vendor:	LMH & LMH, LLC dba Absolute Services	Alan Yoder Enterprises, Inc. dba Superior Alarms	Circle Industries	Protech Integration Systems Inc. dba Protech Security Systems	JSJ Security & Fire dba Safeguard Security & Fire
9	List your company's history of **repeat business** with project owner(s) for similar scope and size.	1	1	1	1	1	1
10	Attach **"Workers Compensation Experience Rating"** for the **last three (3) years** (2017-2019).	3	3	0	0	0	0
				No submittal	No submittal	No submittal	No submittal
11	**Attach "OSHA Form 300 Log** of Work-Related Injuries and Illnesses" for the **last three (3) years (2017-2019)** 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	1	1	3	1	2
			2020	2018		2020	2016, 2017, 2018 (2019/2020 missing)
12	**Attach** your company's **safety program manual and/or procedures for current and new employees**.	2	2	2	0	2	2
					No submittal/quality control		
13	**State the frequency** safety inspections are conducted for projects.	1	1	1	1	1	1
14	**Attach** your company's **drug/alcohol prevention policy and/or procedures.**	1	1	1	0	1	1
					No submittal		
15	**Select** the correct statement: • 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
16	**List names** of the individuals who will be assigned for the duration of the project (i.e., Project Manager, Assistant Project Manager, Project Superintendent, Assistant Project Superintendent and MEP Quality Control Specialist). Include their **job titles, job descriptions/responsibilities, and attach details listed in section 11.16 of the CSP.**	2	1	2	1.5	1	2
			No JD		missing JD 1/Listed 2 individuals	No JD	
17	**Attach a letter from your surety** company addressing the following points. **1) Surety Company** • 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** • Maximum bonding limit for the contractor • Aggregate/total available limit of coverage. • Years doing business with surety	2	1	1	2	1	2
			No letter provided	No letter provided		No letter provided	

Competitive Sealed Proposal No. 2021-127 CSP Location 1 - Cathey Middle School and Location 2 - Jackson Elementary School Fire Alarm Upgrade(s)

	Competitive Sealed Proposal No. 2021-127 CSP Location 1 - Cathey Middle School and Location 2 - Jackson Elementary School Fire Alarm Upgrade(s)	Vendor:	LMH & LMH, LLC dba Absolute Services	Alan Yoder Enterprises, Inc. dba Superior Alarms	Circle Industries	Protech Integration Systems Inc. dba Protech Security Systems	JSJ Security & Fire dba Safeguard Security & Fire
18	**List projects** that your company **currently** has **in progress**. For each project listed address the following points: • 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
19	• 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	0	0	0	2	2
			No submittal/upon request	No submittal	No submittal/upon request		
20	Select your company's Dun & Bradstreet risk indicator and attach documentation (risk indicator 1 – 4): (1 pt.)	1	1	1	0	1	0
19	**Bid Bond**	1	1	1	1	1	1
20	**Attach** a proposed **project schedule/timeline**	2	0	2	0	2	2
			No submittal/upon request		No submittal/upon request		
	Score based on other PRICE	60	*2048.5*	*2046*	*20*	*2041.5*	*30.5*
	Score based on OTHER POINTS	40	*32.22*	*24.57*	*24.13*	*60.00*	*43.55*
	Total Points ➡	100	2080.7	2070.6	44.1	2101.5	74.0

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.

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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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.

[X] 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.

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§ 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

§ 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

§ 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

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

Item	Price
Contingency	$[ ]

§ 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.)

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[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 Governmentt 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:

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§ 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:

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(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 nonconformingWork 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

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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

[X] 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

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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.

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§ 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")

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(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:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

CONTRACTOR:

[ ]

By: _____
Printer Name:
Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

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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

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EXHIBIT B

to

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

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EXHIBIT C

to

(Table deleted)

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

Payment Bond

and

Performance Bond

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(Table deleted)

EXHIBIT D

to

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

Contractor's Insurance Certificates

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EXHIBIT E

to

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

Plans and/or Specifications

(Table deleted)

DRAFT

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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)

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ADDITIONS AND DELETIONS:
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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.

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§ 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 sale 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.

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§ 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.

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§ 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

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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

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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

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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.

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§ 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)

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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

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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.

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§ 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 I 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 ensuing 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.

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§ 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

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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.

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§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.

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§ 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

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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.

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§ 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.

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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

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.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.

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§ 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.

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§ 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

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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

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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. Contactor 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

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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

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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.

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§ 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.

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§ 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 Contactor 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.

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§ 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

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.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

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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.

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§ 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 Wavier 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);

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.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	$2,000,000.00 per occurrence
Property Damage	$2,000,000.00 aggregate

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.

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§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;

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.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,

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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 11or 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

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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

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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.

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§ 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.

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§ 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.

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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

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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.

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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.

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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.

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§ 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:	**CONTRACTOR:**
McALLEN INDEPENDENT SCHOOL DISTRICT	[_____]
By: _____	By: _____ Printed Name: _____ Title: _____
_____ Date	_____ Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)

DRAFT

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Competitive Sealed Proposal No. 2021-128 Location 1 – Travis Middle School and Location 2- Crockett Elementary School Fire Alarm Upgrade(s)

REFERENCE: Goal 3 - Facility Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for fire alarm upgrades at various schools.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Seven hundred eighty-two (782) contractors were invited to submit proposals, and three (3) contractors responded. On September 16, 2020, the evaluation committee, comprised of Ruben Treviño, Executive Director of Facilities Maintenance & Operations; Melissa Ortiz, Project Manager for Facilities Maintenance & Operations; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Purchasing Services Coordinator; and Sandra Zamora, Senior Buyer, evaluated the proposals and is recommending that the Board award this contract to JSJ Security and Fire Inc. dba SafeGuard Security & Fire from Mission, TX, the highest ranked contractor. Administration is currently in negotiations with potential contractor.

LEGAL REVIEW:

A draft copy of the AIA contract is attached. The AIA contract is pending receipt of payment and performance bonds and final legal review.

BUDGETARY CONSIDERATIONS:

The contract price for this project is $275,583.00, which includes a contingency in the amount of $10,000.00 per school location. Funds for this project are available through the Capital Projects Fund, using budgeted funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Competitive Sealed Proposal No. 2021-128 Location 1 – Travis Middle School and Location 2- Crockett Elementary School Fire Alarm Upgrade(s) to JSJ Security and Fire Inc. dba SafeGuard Security & Fire.

SUBMITTED BY: _____ **SUPERVISOR:** Arely Benavides (Oct 6, 2020 17:29 CDT)

For further information contact:
Name: Ruben Treviño
Office: (956) 632-3200
email: ruben.trevino@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Competitive Sealed Proposal (CSP) 2021-128 Location 1 – Travis Middle School and Location 2- Crockett Elementary School Fire

	Competitive Sealed Proposal (CSP) 2021-128 Location 1 – Travis Middle School and Location 2- Crockett Elementary School Fire Alarm Upgrade(s)	Max. Pts	LMH & LMH, LLC dba Absolute Services Inc.	Circle Industries	JSJ Security & Fire dba Safeguard Security & Fire
	Vendor:				
	Rank➡➡		**2**	**3**	**1**
	Total Points➡		79.1	51.3	90.5
1	**AMOUNT/BASE BID (CONTINGENCY INCLUDED)**		**$326,900.00**	**$528,022.98**	**$275,583.00**
	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	50.6	31.3	60.0
2	**List three (3) references** of current or past projects completed within the past five (5) years of similar scope and size • 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).	3	3	3	3
	Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)				
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
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	1
			No prev work district	No prev work district	
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	1.5	3	1
	Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)		3 Same Scope/0 Same Size		1 Same Scope/1 Same Size
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	2	0	0.5
	Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)		3 same scope/1 same size	listed k-12	1 Same Scope/0 Same Size
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	1.5	3
				Listed-no letters	
8	List your company's history of **on-time project completion** (based on responses stated in questions 4-6)	3	3	0	3
				Blank	
9	List your company's history of **repeat business** with project owner(s) for similar scope and size.	1	1	1	1
10	Attach **"Workers Compensation Experience Rating"** for the **last three (3) years** (2017-2019).	3	3	0	0
				No submittal	No Submittal
11	**Attach "OSHA Form 300 Log** of Work-Related Injuries and Illnesses" for the **last three (3) years (2017-2019)** 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	1	3	2
			2020		2016, 2017, 2018 (2019/2020 missing)
12	**Attach** your company's **safety program manual and/or procedures for current and new employees**.	2	2	0	2
				No submittal/quality control	
13	**State the frequency** safety inspections are conducted for projects.	1	1	1	1
14	**Attach** your company's **drug/alcohol prevention policy and/or procedures.**	1	1	0	1
				No submittal	

Competitive Sealed Proposal (CSP) 2021-128 Location 1 – Travis Middle School and Location 2- Crockett Elementary School Fire

	Competitive Sealed Proposal (CSP) 2021-128 Location 1 – Travis Middle School and Location 2- Crockett Elementary School Fire Alarm Upgrade(s)	Vendor:	LMH & LMH, LLC dba Absolute Services Inc.	Circle Industries	JSJ Security & Fire dba Safeguard Security & Fire
15	**Select** the correct statement: • 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
16	**List names** of the individuals who will be assigned for the duration of the project (i.e., Project Manager, Assistant Project Manager, Project Superintendent, Assistant Project Superintendent and MEP Quality Control Specialist). Include their **job titles, job descriptions/responsibilities, and attach details listed in section 11.16 of the CSP.**	2	1	1.5	2
			No JD	missing JD 1/Listed 2 individuals	
17	**Attach a letter from your surety** company addressing the following points. **1) Surety Company** • 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** • Maximum bonding limit for the contractor • Aggregate/total available limit of coverage. • Years doing business with surety	2	1	2	2
			No Letter Provided		
18	**List projects** that your company **currently** has **in progress**. For each project listed address the following points: • 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
19	**Attach** a **CURRENT** financial statement • 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	0	0	2
			No submittal/upon request	No submittal/upon request	
20	Select your company's Dun & Bradstreet risk indicator and attach documentation (risk indicator 1 – 4): (1 pt.)	1	1	0	0
				Blank	Blank
19	**Bid Bond**	1	1	1	1
20	**Attach** a proposed **project schedule/timeline**	2	0	0	2
			No submittal/upon request	No submittal/upon request	
	Score based on other PRICE	60	*2048.5*	*20*	*30.5*
	Score based on OTHER POINTS	40	*50.58*	*31.31*	*60.00*
	Total Points➡	100	2099.1	51.3	90.5

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.

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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
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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.

[X] 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.

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§ 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

§ 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

§ 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

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

Item	Price
Contingency	$[ ]

§ 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.)

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[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 Governmentt 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:

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§ 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:

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(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 nonconformingWork 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

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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

[X] 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

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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.

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§ 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")

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(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:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

CONTRACTOR:

[ ]

By: _____
Printer Name:
Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

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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

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EXHIBIT B

to

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

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EXHIBIT C

to

(Table deleted)

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

Payment Bond

and

Performance Bond

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(Table deleted)

EXHIBIT D

to

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

Contractor's Insurance Certificates

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EXHIBIT E

to

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

Plans and/or Specifications

(Table deleted)

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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)

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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.

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§ 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 sale 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.

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§ 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.

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§ 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

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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

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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

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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.

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§ 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)

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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

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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.

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§ 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 I 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 ensuing 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.

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§ 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

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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.

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§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.

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§ 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

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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.

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§ 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.

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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

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.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.

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§ 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.

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§ 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

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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

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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. Contactor 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

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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

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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.

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§ 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.

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§ 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 Contactor 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.

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§ 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

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.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

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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.

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§ 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 Wavier 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);

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.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	$2,000,000.00 per occurrence
Property Damage	$2,000,000.00 aggregate

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.

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§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;

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.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,

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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 11or 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

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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

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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.

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§ 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.

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§ 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.

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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

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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.

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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.

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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.

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§ 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:	**CONTRACTOR:**
McALLEN INDEPENDENT SCHOOL DISTRICT	[_____]
By: _____	By: _____ Printed Name: _____ Title: _____
_____ Date	_____ Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)

DRAFT

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Request for Proposal No. 2020-264 Fire and Intrusion Alarm Monitoring Services

REFERENCE: Goal 3 - Facility Priorities; Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On June 10, 2020 the District solicited proposals for fire and intrusion alarm monitoring services for the District. The services will include transitioning from a dedicated land line solution to a cellular base solution.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Four hundred ten (410) companies were invited to submit proposals, and four (4) companies responded. On September 2, 2020 the evaluation committee, comprised of Judith Escamilla, Executive Director of Technology Systems; Sam Juarez, Coordinator for Network Services; Daniel Rodriguez, Technician Electronic Equipment; Ruben Trevino, Executive Director of Facilities, Operations, and Maintenance; Ben Arredondo, FMO Supervisor Auxiliary Services; Alejandra Gonzalez, Director of Purchasing Services; and Elizabeth Cabrera, Purchasing Coordinator, evaluated the proposals and is recommending that the Board award this contract to Alan Yoder Enterprises, Incorporated dba Superior Alarms, the highest ranked vendor.

LEGAL REVIEW:

The agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Fire and intrusion alarm monitoring will cost $48,166.80 and $144,428.40, respectively. Funds for this project are budgeted through the General Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2020-264 Fire and Intrusion Alarm Monitoring Services, and award Alan Yoder Enterprises, Incorporated dba Superior Alarms for a term of two (2) years through October 13, 2022, with the option to renew for one (1) additional one (1) year term.

SUBMITTED BY: Judith Escamilla

SUPERVISOR: Arely Benavides (Oct 9, 2020 18:45 CDT)

For further information contact:
Name: Judith Escamilla,
Office: 956-632-3275
eMail: judith.escamilla@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

FIRE ALARM AND INTRUSION ALARM MONITORING AND SERVICES
PRICE SHEET

FIRE ALARM MONITORING AND SERVICES

DESCRIPTION	QTY	UNIT PRICE	MONTHLY FEE	**TOTAL**	Recommend for Award
No. 1 Fire Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for one (1) Year Contract (12 months)**					
Vendors					
*Absolute Services	41	$540.00	$45.00	$22,140.00	
Alan Yoder Enterprises, Inc. Superior Alarms	41	$57.00	$684.00	$28,044.00	
Safeguard Fire & Security	41	$350.00	$325.00	$174,250.00	
*Security International	41	$1,590.60	$132.55	$65,805.20	
2 Fire Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for two (2) Year Contract (24 months)**					
Vendors					
*Absolute Services	41	$960.00	$40.00	$39,360.00	
Alan Yoder Enterprises, Inc. Superior Alarms	41	$48.95	$1,174.80	$48,166.80	**Recommend**
Safeguard Fire & Security	41	$350.00	$325.00	$334,150.00	
*Security International	41	$2,616.24	$109.01	$109,882.08	
3 Fire Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for three (3) Year Contract (36 months)**					
Vendors					
*Absolute Services	41	$1,260.00	$35.00	$51,660.00	
Alan Yoder Enterprises, Inc. Superior Alarms	41	$41.95	$1,719.95	$61,918.20	
Safeguard Fire & Security	41	$350.00	$325.00	$494,050.00	
*Security International	41	$3,450.24	$95.84	$144,910.08	

***DID NOT INCLUDE COST OF EQUIPMENT**

INTRUSION ALARM MONITORING AND SERVICES

	DESCRIPTION	QTY	UNIT PRICE	MONTHLY FEE	**TOTAL AMOUNT**	Recommend for Award
1	Intrusion Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for One (1) Year Contract (12 months)**					
	Vendors					
	*Absolute Services	43	$395.40	$32.95	$17,002.20	
	Alan Yoder Enterprises, Inc. Superior Alarms	43	$144.95	$6,232.85	$74,794.20	
	Safeguard Fire & Security	43	$275.00	$325.00	$179,525.00	
	*Security International	43	$1,021.56	$85.13	$43,927.08	

2	Intrusion Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for Two (2) Year Contract (24 months)**					
	Vendors					
	*Absolute Services	43	$718.80	$29.95	$30,908.40	
	Alan Yoder Enterprises, Inc. Superior Alarms	43	$139.95	$3,358.80	$144,428.40	**Recommend**
	Safeguard Fire & Security	43	$275.00	$325.00	$347,225.00	
	*Security International	43	$1,565.28	$65.22	$67,307.04	

3	Intrusion Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for three (3) Year Contract (36 months)**					
	Vendors					
	*Absolute Services	43	$936.00	$26.95	$41,718.60	
	Alan Yoder Enterprises, Inc. Superior Alarms	43	$134.95	$4,858.20	$208,902.60	
	Safeguard Fire & Security	43	$275.00	$325.00	$514,925.00	
	*Security International	43	$2,072.88	$57.58	$89,133.84	

***DID NOT INCLUDE COST OF EQUIPMENT**

MCALLEN INDEPENDENT SCHOOL DISTRICT
CONTRACT NO. 2021-143 Alan Yoder Enterprises, Incorporated dba Superior Alarms through Request for Proposal No. 2020-264

This contract ("Contract"), made and entered into effective by and between **McALLEN INDEPENDENT SCHOOL DISTRICT** (hereinafter referred to as "District") and **Alan Yoder Enterprises, Incorporated dba Superior Alarms, a Texas Corporation** hereinafter referred to as "Contractor") as of the date of execution (the "Commencement Date") by the District as shown on the signatory page of this Contract.

WITNESSETH:

WHEREAS, District recognizes that the **Department of Technology** District (the "Department") requires certain services ("Services") rendered by Contractor who has the training, experience, and qualifications necessary to provide the services;

WHEREAS, District requested proposals from vendors for Services, more particularly described on Exhibit A attached hereto ("District's Request for Proposal No. 2020-264";

WHEREAS, Contractor submitted a response to the District's proposal;

WHEREAS, District has determined that the proper, orderly and efficient delivery of quality Services for the District can be accomplished best by contracting with Contractor in accordance with the local, state and federal regulations for procurement;

WHEREAS, District has determined that for proper and efficient operation of the Department, several objectives must be met, including, among others, coordination of schedules and assignments, administrative ease and efficiency, consistency and uniformity in book and recordkeeping, and the delivery of quality Services;

WHEREAS, the Contractor is willing to accept the responsibility of providing the Services to the District in accordance with recognized standards, the Board Policies of District, applicable laws and regulations and the terms and conditions set forth in this Contract; and

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the provision of the Services by Contractor during the term of this Contract;

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. OBLIGATIONS OF THE CONTRACTOR

Contractor shall perform all of the work and provide all equipment, materials, and labor required in accordance with the terms and conditions of the Contract Documents, as hereinafter defined.

Contractor represents and warrants to District that Contractor possesses all of the licenses, permits, and expertise required to provide the equipment, materials, and labor and perform the services contemplated hereunder. Contractor warrants and represents that during the term of this Contract, Contractor shall maintain all such licenses and permits. Contractor warrants that the services rendered and equipment, materials, and labor furnished shall be in accordance with the terms of the Contract Documents.

The term Contract Documents as used herein shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract. The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

A. This Contract

B. Exhibit "A" – District's Request for Proposal No. No. 2020-264

C. Exhibit "B" – Vendor's Services, Products and Fees Pursuant to Request for Proposal No. No. 2020-264

D. Exhibit "C" – Certificate of Insurance

E. Exhibit "D" - "Superior Alarms Standard Fire Alarm Agreement with Rider for Security Services"

This Contract is entered into subject to the following conditions:

A. Contractor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees of District and /or the learning environment of students of District while performing its work in accordance with the Contract Documents.

B. Contractor assumes full responsibility and liability for all labor and materials furnished and activities conducted by Contractor pursuant to this Contract and any action or omission incident thereto.

2. INSURANCE COVERAGE

At all times during the term of this Contract, Contractor will, at Contractor's expense, carry and maintain the following insurance coverages with the minimum coverage amounts as follows:

A. Statutory Workers' Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - $500,000

B. Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate.

C. Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles;

each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000. No deletions/exclusions from standard coverage form allowed without written consent of District. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

D. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job.

E. The Contractor will provide a certificate of insurance to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason. Such Certificate of insurance shall be attached to this Contract as Exhibit C.

3. TRANSFER, ASSIGNMENT, ETC.

Contractor agrees, for itself and on behalf of its successors, and any person or persons claiming under Contractor by virtue hereof, that this Contract and the rights, interests, and benefits hereunder cannot be assigned, transferred, pledged, or hypothecated in any way and shall not be subject to execution, attachment, or similar process. Any such attempt to do so, contrary to the terms hereof, shall be null and void and shall relieve the District of any and all obligations or liability hereunder.

4. ADJUDICATION

If any provision, paragraph, or subparagraph of this Contract is adjudged by any court of law to be void or unenforceable, in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of the Contract, including any other provision, paragraph, or subparagraph.

5. PROVISIONS, PARAGRAPHS

Each provision, paragraph, and subparagraph of this Contract is declared to be separable from every other provision, paragraph, and subparagraph and constitutes a separate and distinct covenant.

6. PAYMENT

As consideration for performing the services and supplying the equipment, materials and labor pursuant to the Contract Documents, District agrees to pay Contractor a cost consistent with the pricing agreed upon, a copy of which is attached hereto as Exhibit B and is incorporated herein for all purposes. The payment for services, materials, and labor shall be paid by District to Contractor as invoiced upon successful and satisfactory installation of equipment and materials pursuant to the Contract Documents upon verification by District's authorized representative of such invoice in compliance with the Contract Documents.

7. TAXES AND BENEFITS

Contractor expressly acknowledges that Contractor will be acting as an independent contractor for all purposes, including payment of social security, withholding taxes, and all other federal, state, and local taxes. Contractor, as independent contractor, shall be solely responsible to its employees, agents, third party contractors any other person supplying labor or material for Contractor in performing any portion of this Contract or any action or omission incident thereto. Contractor also agrees to pay for and provide workers compensation insurance covering all employees working for Contractor in performing labor pursuant to this Contract or any activity incident thereto.

8. INCURRING FINANCIAL OBLIGATION

The Contractor will incur no financial obligation on behalf of District without prior written approval of the Superintendent of District. The Contractor will be responsible for all personal and professional expenses.

9. ACCESS TO BOOKS AND RECORDS

Contractor recognizes that District is a participant in governmental payment programs. In connection with such programs, the Contractor agrees to cooperate with District and provide to District reasonable assistance in District's efforts to meet the requirements for participation in and payment under such programs.

10. NON-DISCRIMINATION

Contractor will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing services under this Contract or in the selection of associates, employees, or independent contractors.

11. HOLD HARMLESS

Contractor agrees to hold harmless and indemnify District from any liability and/or damages, which may directly or indirectly arise from or occur in connection with Contractor's performance under this Contract or any action, activity or omission incident thereto. Such indemnification shall include but not be limited to all District's attorneys' fees and costs incurred in defending or responding to any action brought or threatened against District for any action or omission arising from or incident to Contractor's performance under this Contract.

12. TERM AND TERMINATION OF CONTRACT

Term. The term of this Contract shall commence on the Commencement Date and remain effective for a term of two (2) years with the option to renew for an additional one (1) year term. All services must be completed during the term of the Contract.

A. Termination without Cause. District shall have the right to terminate this Contract without cause on thirty (30) days written notice to the Contractor.

B. Termination with Cause.

a. **Termination by District.** District may terminate this Contract immediately upon the occurrence of any of the following events:

   i. Any conduct of the Contractor, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

   ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 2 hereof.

   iii. Failure of Contractor to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

   iv. In addition, if the Contractor commits a material breach of any of the terms of this Contract, other than those listed in subsections (i) through (iii) above, District may terminate this Contract upon no less than thirty (30) days written notice.

b. **Termination by Contractor.** In the event District breaches any material term of this Contract, Contractor may terminate this Contract upon no less than fifteen (15) days written notice.

c. **Non-Interference.** Following the expiration of this Contract or its termination for any reason, Contractor agrees to do nothing that may interfere with any contract of District with any other individual or entity for the provision of the services herein.

13. NOTICES

All notices provided to be given under this Contract shall be given in writing and will be deemed delivered when deposited in the United States Postal Service by certified or registered mail, addressed to the proper party, at the following addresses:

If to District:
McAllen Independent School District
Attn: Jose A. Gonzalez, Superintendent
2000 N. 23rd Street
McAllen, Texas 78501

If to Contractor:
Alan Yoder Enterprises, Incorporated dba Superior Alarms
Attn: Alan Yoder
PO Box 3097
McAllen Texas 78502
Email: alan@superioralarms.com

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this section.

14. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS CONTRACT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THIS AGREEMENT ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS.

15. NO IMPLIED WAIVER

No waiver or modification of the Contract Documents shall be valid unless it is in writing and signed by the District and Contractor.

16. SEVERABILITY

The invalidity or unenforceability of any provisions of this Contract will not affect the validity or enforceability of any other provision.

17. ASSIGNABILITY

The right and obligations of District hereunder shall inure to the benefit of and be binding upon the successors and assigns of District. The Contractor may not assign Contractor's rights or obligations under this Contract without District's written consent. Any assignment in violation of this provision shall give District the right to terminate this Contract immediately, upon written notice to the Contractor.

18. AMENDMENTS

All provisions of the Contract Documents shall be strictly complied with and performed by Contractor; and no amendment to this Contract shall be made except upon the written agreement by the parties. No amendment shall be construed to release either party from any obligation, representation, and/or warranty of the Contract Documents except as specifically provided for in such amendment.

19. ENTIRE CONTRACT

This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof. This Contract supersedes any and all other agreements, except for the "Superior Alarms Standard Fire Alarm Agreement

with Rider for Security Services", a copy of which is attached hereto as Exhibit D whether oral or in writing, between the parties with respect to the subject matter the Contract.

20. INTERPRETATION

The defined terms used herein are for convenience only and do not limit the contents of this Contract.

21. VARIATIONS OF PROUNOUNS

All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

22. AUTHORIZATION FOR CONTRACT

The execution and performance of this Contract by District and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes the valid and enforceable obligations of Contractor and District in accordance with its terms.

23. IMMUNITIES

Nothing in this Contract is intended to and District does not hereby waive, release or relinquish any right to assert any of the defenses District enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to District as to any claim or action of any person, entity, or individual against District.

24. NON-APPROPRIATION OF FUNDS.

In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the payments for the services are due under this Contract, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Contractor and any assignee of such occurrence. This Contract shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under this Contract relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Contractor or its assignee stop the services on the date of such termination.

25. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA).

Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent except as provided in the Family Educational Rights and Privacy Act (FERPA).

26. CRIMINAL HISTORY INFORMATION.

Pursuant to Texas Education Code Section 22.0834, Contractor shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of the Contractor if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the contracted services herein, and the duties are or

will be performed on school property or at another location where students are regularly present. Contractor shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process was followed.

Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District's property or other location where students are regularly present, District shall be the final decider of what constitutes a "location where students are regularly present". Contractor's violation of this section shall constitute a material breach of contract. If the Contractor is the person, owner, or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence of compliance acceptable to District, with this Contract.

27. ENTITIES THAT BOYCOTT ISRAEL

If Contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Contractor does not make that certification, Contractor must indicate that in its Response and state why the certification is not required.

28. Sec. 2252.152 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.

A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

Sec. 2252.153. **LISTED COMPANIES**. The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

Sec. 2252.154. **EXCEPTION.** Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3. This Act takes effect September 1, 2017.

29. BREACH OF CONTRACT AND FEES

If either party hereto shall breach any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including attorney's fees, incurred by such party in enforcing the terms of this Contract.

30. FURTHER DOCUMENTS

The parties hereto covenant and agree that they will execute such other and future instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

31. BINDING NATURE

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

32. CONTRACT TERMS CONTROL

The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract, except for the terms and provisions in "Superior Alarms Standard Fire Alarm Agreement with Rider for Security", a copy of which is attached hereto as Exhibit D.

IN WITNESS WHEREOF, the execution and performance of this Contract by each of the parties hereto have been duly authorized by all necessary laws, resolutions, ordinances, or governing body action, and this Contract constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms.

EXECUTED on _____
Date

DISTRICT:

McAllen Independent School District

By:_____

Conrado Alvarado, President, Board of Trustees

Alan Yoder Enterprises, Incorporated dba Superior Alarms

By:_____

Alan Yoder, President

Approved as to form:
Atlas Hall & Rodriguez, LLP
by: Stephen L. Crain
Stephen L. Crain (Oct 9, 2020 18:10 CDT)
_____

Stephen Crain

Exhibit "A" – District's Request for Proposal No. 2020-264

ALEJANDRA GONZALEZ
Director of Purchasing Services

May 20, 2020

McAllen Independent School District (the "District") invites your submittal on:

Request for Proposal No. 2020-264 Fire and Intrusion Alarm Monitoring Services

In light of the pandemic, **only electronic submittals will be accepted** through Public Purchase (https://www.publicpurchase.com/) and shall be received **no later than** 3:00 p.m. local time, June 3, 2020.

Submittals received after this deadline will be void and unacceptable.

Any questions regarding this solicitation must be submitted through the "Questions" option located on the Public Purchase website, no later than 10:00 AM, May 29, 2020. Questions/clarifications regarding this solicitation will not be answered by phone nor email.

Thank you,

Alejandra Gonzalez
Director of Purchasing Services

SECTION A
GENERAL TERMS AND CONDITIONS

Please read the following information carefully. Any exceptions to these terms and conditions will be cause for a proposal to be disqualified. Additionally, please read the Specifications and Scope of Work contained in each Invitation for Request for Proposal ("RFP"). The Specifications and Scope of Work in the RFP will take precedence over the General Terms and Conditions when they are in conflict. Prospective Proposers are responsible for familiarizing themselves with all aspects of the process for the Request for Proposal.

1. ProposerGuarantee:
   - 1.1 Proposer agrees to comply with all terms and conditions contained in this document and the RFP.
   - 1.2 Proposal must comply with all federal, state, county, and local laws concerning these types of goods/services.
   - 1.3 Proposer guarantees products/services offered will meet or exceed the written specifications identified in the RFP.
   - 1.4 Proposer agrees to protect the District from claims involving infringement of patents or copyrights.
   - 1.5 Minimum Standards for Responsible Prospective Proposers: The business must be a well- established organization and have an adequate number of trained personnel to ensure quality and performance and completion of contract within a specified time period. A prospective Proposer must affirmatively demonstrate Proposer's responsibility. District may request representation and other information sufficient to determine Proposer's ability to meet the following minimum standards:
     - 1.5.1 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in district, state or federal procurements or contracts;
     - 1.5.2 are not identified in the "Debarment and Suspension" issued by the General Services Administration;
     - 1.5.3 have adequate financial resources, or the ability to obtain such resources as required;
     - 1.5.4 be able to comply with the required or proposed delivery schedule;
     - 1.5.5 have a satisfactory record of performance;
     - 1.5.6 have a satisfactory record of integrity and ethics;
     - 1.5.7 be otherwise qualified and eligible to receive an award.
   - 1.6 Contract: This proposal, when properly accepted by District, shall constitute a contract equally binding between the awarded Proposer and District. Different or additional contractual terms may become a part of this contract.
   - 1.7 Conflict of Interest: Any purchase order of contract resulting from this process shall be considered null and void if the awarded Proposer fails to comply with Section 1, Subtitle C, Title 5, Local Government Code Chapter 176: Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information, specifically Sec. 176.006: Disclosure Requirements for Contractors and Other Persons; Conflict of Interest Questionnaire Form CIQ.
   - 1.8 Criminal History Record Information Review: Proposer agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. Proposer, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. Proposer agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. Proposer agrees that if awarded a contract, Proposer will provide to the District a list with names of all of their employees and any subcontractor's employees before commencing any services. Proposer further agrees to provide written notice of any new employees and any new subcontractor's employees to the District immediately after employment. Proposer further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.
   - 1.9 Entities that Boycott Israel: If Proposer is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Proposer certifies that Proposer does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Proposer does not make that certification, Proposer must indicate that in its Response and state why the certification is not required.
   - 1.10 Sec. 2252.152. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.
     - Sec. 2252.153. LISTED COMPANIES. The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
     - Sec. 2252.154. EXCEPTION. Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3. This Act takes effect September 1, 2017.
   - 1.11 Form 1295. Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 to District before Proposer may enter into a contract with that business entity. **Form must be completed online.** If this is your first time to access the Texas Ethics Commission (TEC), you will be required to create an account and establish a user name and password. This will require for you to have a valid email address and know your email user name and password as you will be required to access your email to validate your identity. After creating a user name and password at TEC, you will log in and begin completing Form 1295. Completing Form 1295 will require a contract number, which identifies and ties the form to the District's contract number; which is the assigned RFP No. for this solicitation.
     How to complete Form 1295:
     - Go to website: http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
     - Enter Required information
     - Print form
     - Submit with proposal
   - 1.12 Campus Visitation Procedures: If Proposer is awarded a contract which requires on-site visit, Proposer must first report to the front office and must be prepared to present a valid driver's license for clearance through the District's security system.
   - 1.13 Representations: Proposer represents that the products/services provided by Proposer hereunder shall conform to the representations of same as represented and described in the Attachments. Notwithstanding anything to the contrary herein, if for any reason District determines in its sole discretion, that part or all of such products/services fail to meet the expectation of District, District may on ten (10) days' notice terminate this Contract and receive the pro-rata portion of the contract sum paid to Proposer by District for the unexpired

term of the Contract.

1.14 Proposer, in submitting this proposal, agrees that District shall not be liable to prosecution for damages in the event that District declares Proposer in default.

1.15 Purchases made for school use are exempt from the state sales tax and federal excise tax. Do not include these taxes in your proposal. Both unit prices and extension must be submitted. Unit prices shall govern.

1.16 Adherence to Specifications and Anti-Collusion: Proposer is responsible for reading the instructions and specifications to Proposer. Each Proposer by making his proposal represents that he has read and understands the proposal documents and his proposal is made in accordance therewith. Signing this proposal affirms that your company will enter into a binding contract with District for products/services awarded to your company. Proposer, by signing and executing this proposal, certifies and represents to the District that Proposer has not offered, conferred or agreed to confer any pecuniary benefit, as defined by §1.07(a)(6) of the Texas Penal Code, or any other thing of value, as consideration for the receipt of information or any special treatment or advantage relating to this proposal; Proposer also certifies and represents that Proposer has not offered, conferred or agreed to confer any pecuniary benefit or other things of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this proposal; Proposer certifies and represents that Proposer has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the District concerning this proposal on the basis of any consideration not authorized by law; Proposer also certifies and represents that Proposer has not received any information not available to other Proposers so as to give the undersigned a preferential advantage with respect to this proposal; the Proposer further certifies and represents that Proposer has not violated any state, federal or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that Proposer will not in the future offer, confer, or agree to confer any pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the District in return for the person having exercised the person's official discretion, power or duty with respect to this proposal; Proposer certifies and represents that it has not now and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the District in connection with information regarding this proposal, the submission of this proposal, the award of this proposal or the performance, delivery or sale pursuant to this proposal.

1.17 Bid Guarantee: Bid bonds may be required for certain bids/proposals in excess of $25,000, if stated in the RFP. A bid guarantee will be submitted in the form of a bid bond, postal money order, certified check or cashier's check in an amount not less than 5% of the total maximum amount bid/proposed, payable without recourse to McAllen Independent School District. Failure to furnish a bid guarantee in the proper form and amount by the time set for opening may be cause for rejection of the proposal. If the awarded Proposer, upon acceptance of his proposal by the District within the period specified therein for acceptance, fails to execute such further contractual documents, if any, and give such bond(s) (i.e., performance bonds, payment bonds, delivery, etc.) as may be required within the time specified (ten days if no period is specified) after receipt of the forms by him, then he shall be liable for any cost of procuring the work which exceeds the amount of his proposal, and the bid guarantee shall be available toward offsetting such difference.

1.18 Performance and Payment Bonds: Payment bonds are required on construction projects costing $25,000 or more. Performance bonds are required on construction projects costing $100,000 or more. Payment and Performance bonds may be required for projects other than construction, if stated in the RFP. When a performance or payment bond is required, the amounts shall be for 100% of the contract amount.

1.18.1 Any required bond(s) must be filed with the District within 10 days from the date of the NOA.

1.18.2 Payment and performance bonds must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

1.18.3 Bonds may be executed only by a surety company that is authorized and admitted to write surety bonds in the State of Texas.

1.18.4 A separate performance or payment bond MUST be provided for each contract awarded and must reference the contract number(s) for which the bond is provided.

1.18.5 All references to the bond by Proposer and/or surety companies must reference the contract number in lieu of or in addition to the bonding company's number, and the effective dates of the contract.

1.18.6 Bonds and other forms of surety must be made payable to McAllen Independent School District. Bonds in excess of $100,000 must be from a surety that holds a Certificate of Authority from the United States Department of Treasury or have reinsurance for liability in excess of $100,000 from a United States Treasury listed reinsurer.

2. General Provisions

2.1 Term of Contract and Purchase Order Dates:

2.1.1 The RFP shall state the term of the contract and applicable extensions.

2.1.2 Purchase Order: Purchase order(s) shall be generated by the District to the awarded Proposer(s). **The purchase order number must appear on all itemized invoices and packing slips. District will not be held responsible for any orders placed/delivered without a valid signed purchase order.**

2.1.3 Purchase orders dated during the term of the contract must be honored even if received after the contract expiration date. Proposers may not specify a "final order" receipt date. Pricing is established by the date the order is placed unless otherwise stated in the contract.

2.1.4 Confirmation orders will be the date the order is mailed but will show the date the order was originally placed.

2.1.5 Grace Period: District requests the right to continue to enforce this contract for a period not to exceed ninety (90) days after expiration date for unforeseeable reasons.

2.1.6 District reserves the right to reorder from this proposal for the term of the contract at the proposed award prices or lower provided the terms and conditions remain the same. Proper authorization for reorders and issuance of approved and manually signed purchase orders will be through Purchasing Services only.

2.2 Shipment Identification and Delivery: Special delivery requirements will be addressed in the Specifications and Scope of Work or in the specifications contained in each RFP. The following shall be applicable unless in conflict with specific contract instructions.

2.2.1 Identification of Shipments: In addition to the complete destination address, each package must be clearly marked with the District's purchase order number and the ATTN: addressee as shown on the order. Each shipment must be accompanied by an itemized packing slip.

2.2.2 Packaging and Labeling: All items shipped must be properly labeled showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information usually used by Proposer.

2.2.3 Hours for Delivery: Delivery shall be made between 8:00 a.m. and 3:00 p.m. unless prior approval for after-hours delivery has been obtained from the District.

2.3 Inspection and Tests: All goods are subject to inspection and testing by the District. Authorized District personnel shall have access to a Proposer's place of business for the purpose of inspecting contracted merchandise. Tests may be performed on samples obtained by

District request or taken from regular shipments. When products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by Proposer. Goods that have been delivered and rejected in whole or in part may be, at the District's option, returned to Proposer at Proposer's risk and expense or disposed of in accordance with District procedures. Proposer may request that goods be held at Proposer's risk for a reasonable period of time for later disposition at Proposer's expense. Latent defects may result in revocation of acceptance of any product.

2.4 Late Delivery: If a delivery delay is foreseen, Proposer shall give notice to District with seventy-two (72) hour notice. The District has the right to extend the delivery date if reasons appear valid. Proposer must keep the District advised at all times of the status of the order. If Proposer has orders in their possession which have not been completed within the specified delivery time, the District reserves the right to withhold issuance of further orders until all orders have been filled and acceptable assurance has been given that the event will not be repeated.

2.5 Back Orders: The District may purchase on the open market any commodity reported by a Proposer to be on back order when the resultant delivery time is unsatisfactory. Damages may be applicable in cases of a pattern of back orders.

2.6 Damage Assessment: If a Proposer is in default on an order, the District reserves the right to purchase the item in default and charge the increase in price, if any, and cost of handling to Proposer. Failure to pay a damage assessment is cause for contract cancellation and/or suspension or removal of Proposer from the District's Centralized Master Contractors List (CMBL).

2.7 Emergency Deliveries: In case of an emergency experienced by a qualified ordering entity, the awarded Proposer is requested to supply the needed material immediately, if possible. If the awarded Proposer cannot respond, then the emergency requirement may be purchased on the open market. The District or Proposer shall not consider such purchases a breach of contract.

2.8 Substitutions: All substitutions require prior written approval by the District. The District reserves the right to require Proposer to offer possible substitutes if any material or equipment becomes unobtainable during the term of the contract. Outstanding orders are not automatically amended by an approved substitution. Proposer must contact the qualified ordering entity prior to shipment of the approved substitution.

2.9 Purchases Off Contract: Under certain circumstances, the District permits campuses and other District users to purchase commodities available through a contract on the open market. Such circumstances may be identified in the RFP. Proposers are to allow for such purchases provided purchase orders are issued for these purchases.

2.10 References: District may request Proposers to supply, with this proposal, a list of at least three (3) references where like goods/services have been supplied by their firm. Include name of firm, address, telephone number and name of representative.

2.11 Proposals from unresponsive Proposers will not be accepted. Proposers having a history of inconsistent service and unreliability will not be considered by the District to be a responsible Proposer.

2.12 Proposer will employ accounting policies and procedures hereunder to preserve all contract-related records for the term of this Contract and such further period of time thereafter as may be prescribed by Federal, State or Local regulations. All Proposers are subject to having any records or other documentation related to any transaction with District available for public access or for review and auditing purposes by any local, state or federal agency, as well as, the public in accordance with the provisions of Government Code, Title 5, Subtitle A, Chapter 552, Open Records.

2.13 Notice: Any notice provided by this proposal (or required by Law) to be given to the awarded Proposer by District shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in McAllen, Texas, by Registered or Certified mail, addressed to the awarded Proposer at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

2.14 Venue: This contract will be governed and construed according to the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in Hidalgo County, Texas.

2.15 Silence of Specification: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

2.16 Deviations from Specifications: All deviations from the specifications must be noted in writing, in detail by Proposer at the time of submittal of the proposal. The absence of a written list of specification deviations will hold Proposer strictly accountable to the District to the specifications as written. Any deviations from the specifications as written not previously submitted, as required, will be grounds for rejection of the materials/goods/services and/or equipment when delivered.

2.17 Proposers that fail to comply with the conditions of the RFP may be removed from the District's Centralized Master Contractors List for a period of two years.

2.18 Proposers wishing to reinstate their status must request it in writing at the end of the two-year period.

3. Preparation of Proposal:

3.1 Freight Charges & F.O.B. Point: Quote all proposals F.O.B. destination, transportation prepaid and allowed, i.e., included in the price proposed, unless special contract instructions direct or permit otherwise. Alternate F.O.B. point or freight terms may be offered but are subject to rejection by the DISTRICT.

3.2 Proposal prices must be firm for acceptance for 120 days from proposal opening date unless otherwise specified in the RFP. Proposal prices shall remain in effect for a period of one year from date of acceptance by the Board of Trustees unless otherwise specified in the proposal documents. Refer to Section 7 for additional information regarding proposal prices.

3.3 Usage Figures: Quantities shown on the RFP under the term "Quantity or Qty" are estimated requirements based upon purchase orders for a prior period indicated in the RFP. These figures are not to be construed as guaranteed purchases under the contract; however, the figures will be used as a factor for determining the award and bonding requirements. District users will purchase all commodity requirements from contract Proposers but only in such quantities as actual needs require. To keep consistency of the item description and item numbers, some item quantity(s) is/are marked with a zero (0) quantity on the proposal sheet. Proposals are requested on these items as well.

3.4 Referenced Example: Any catalog number, brand name or manufacturer's reference used in an RFP is descriptive only (not restrictive) and is used to indicate type and quality desired. Proposals for brands of like nature and quality will be considered. Proposer should not construe specifications for the referenced example to be the minimum requirements acceptable. The District is the sole determinate as to acceptability of specifications in its best interest. If proposing other than the referenced example, Proposer must show the manufacturer, brand or trade name, and model number and give a full description of the product offered. The submission of illustrations and specification brochures is encouraged to provide a complete description of the product being offered. If a Proposer takes no written exception to the referenced example in the proposal, the brand names, numbers, etc., exactly as specified in the RFP shall be furnished.

3.5 Condition of Products: All items proposed shall be new and unused and in first class condition, including containers suitable for shipment and storage, unless otherwise specified in the RFP.

3.6 Warranty: Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.

3.7 Unit of Measure: If offering a proposal price for a different unit of measure, the exception and proposed packaging must be shown by the line item proposal.

3.8 Alternate Proposals: Alternate or supplemental proposals shall be submitted as a separate item and be identified by Proposer's name and signature and be cross-referenced to the applicable item in the RFP.

3.9 Samples: DO NOT send samples unless requested. Any samples submitted must be furnished at no cost to the District. If not destroyed in examination, samples will be returned to Proposer on request at Proposer's expense. Samples submitted to verify compliance with specifications prior to making an award may be retained at Proposer's expense. Samples submitted to verify compliance with specifications prior to making an award may be retained for the duration of the contract for later comparison with items delivered. Each sample should be marked with Proposer's name, address, proposal opening date and proposal number. Do not attach samples to proposal pages. Failure to submit samples when requested shall cause items not to be considered for award. All samples are to be delivered to:

McAllen Independent School District
Attn: Purchasing Services
4309 Warrior Dr. Bldg. C.
McAllen, TX 78501-7734

3.10 Signature on Proposal: Electronic signatures are acceptable. The person signing the proposal must have authority to bind the represented company to a contract. An unsigned proposal cannot be signed after the proposal opening time even though Proposer or a representative is present at the proposal opening.

3.11 Attachments: Proposers may include attachments to describe commodities being proposed and/or to exhibit that products offered meet all written specifications; however, do not submit samples unless requested to do so. No terms or conditions recorded on any attachment will be considered binding unless specifically made a part of the proposal in writing. WARNING: Any added terms or conditions may result in disqualification of a proposal, e.g., proposals subject to laws of a state other than Texas, requirements for prepayment, limitations on remedies, etc.

3.12 Addendums: Should an addition or correction become necessary after an RFP is issued, an addendum relating to the necessary information will be issued/posted to website. It is Proposer's responsibility to view the Public Purchase page regularly, or prior to submitting a response, to ensure that no addenda or additional information have been issued for the solicitation. The web address is https://www.publicpurchase.com.

3.13 Discounts for large one-time order deliveries, educational purposes, etc. The conditions for earning the discount may be indicated by the item being proposed or by submitting a separate page with the information. These discounts will not be considered in determining the low proposal but will be part of any contract issued.

3.14 Proposal Preparation Expense: Any expense related to the submission of a proposal is the sole responsibility of the Proposer. The District will not reimburse Proposers for any cost related to proposal preparation or submission.

3.15 All Proposers doing business with the District must have on file a Form W-9 Request for Taxpayer Identification Number and Certification.

3.16 All Proposers must provide a Felony Conviction Notification as required by Texas Education Code, Subchapter B, Section 44.034, Notification of Criminal History, Subsection (a). A copy of this form is included for your use as part of Contractor Certifications Form.

4. Submission of Proposal:

4.1 No Bids: To remain on Proposer's list, "NO BIDS" must be submitted by Proposers wishing to remain on the District's Centralized Master Contractors List (CMBL). Continued submittal of "NO BIDS" will result in Proposer being removed from the District's Centralized Master Contractors List (CMBL). Proposers not submitting proposals or submitting "no bids" may be removed without notice at any time and must reapply for inclusion in the District's Centralized Master Contractors List (CMBL). The District is not responsible for any errors occurring as a result of this procedure.

4.2 Public Proposal Opening: Proposals are opened in a manner to avoid disclosure of contents to competing Proposers and the contents are kept secret during the process of proposal negotiations. A copy of the proposal tabulation is usually available for public review after proposal awards. Tabulation information is available for download the day after award from our website at https://www.mcallenisd.org/apps/pages/index.jsp?uREC_ID=1097282&type=d&pREC_ID=1406975

4.3 Late Proposals: Late proposals will NOT be considered. The District will not be responsible for missent or misplaced proposals.

4.4 Amending/Withdrawing Proposal: A proposal cannot be altered or amended after the proposal opening date and time. Any alterations made before the opening date and time shall be initialed by Proposer or Proposer's authorized agent identified in the proposal. No proposal can be withdrawn after the opening date and time without approval of District. All approvals shall be based upon an acceptable written reason for the action.

4.5 Proposal Package(s): The District encourages and prefers proposals submitted on District RFP form(s) electronically; however, DISTRICT will be accepting sealed packages on CD, USB, paper/hardcopy through mail or hand delivery. Each proposal must be placed in a separate submittal. Proposals must be submitted and time stamped at District no later than the date and time specified for the proposal opening. Only the completed W-9, Contractor Certifications Form, Form 1295, Conflict of Interest and those pages on which a Proposer is submitting a proposal need to be returned. Blank pages or pages with no proposal information should not be returned.

4.6 Price lists must be included in the RFP. Any terms and conditions in a price list will not be considered a part of a proposal unless specifically identified by Proposer and referenced in writing.

4.7 Proposals via the U. S. Postal Service are to be sent to the address shown below.

McAllen ISD
Attn: Purchasing Services RFP #
4309 Warrior Drive, Bldg. C.
McAllen, TX 78501

4.8 Confidential: Subject to the requirements of the Texas Open Records Act, if a company believes that a proposal is, or parts of a proposal are confidential, then the company must so specify. The company must stamp in bold letters the term "CONFIDENTIAL" on that part of the

proposal, which the company believes to be confidential. The awarded proposal may be considered public information even though parts are marked confidential.

4.9 Copyrighted proposals are unacceptable and will be disqualified as unresponsive.

5. Proposal Evaluation and Award:

5.1 Proposal Evaluation: The District reserves the right to award on the basis of a low line item, low total (group or groups) or in any other combination that will best serve the interests of the District. The lowest proposal will not necessarily be the awarded proposal. Proposals will be assessed not only in terms of the cost of the goods/equipment, but also in terms of responsiveness of the proposed goods/services to the District's needs and requirements. The District reserves the right to accept or reject all or any part of a proposal, waive minor technicalities and make an award in the best interest of the District.

5.2 A response to an RFP is an offer to contract with the District based upon the terms, conditions and specifications contained in the RFP.

5.3 Proposals do not become contracts until a Notice of Award (NOA) is issued.

5.4 The contract shall be governed, construed and interpreted under the laws of the state of Texas.

5.5 The District will not be bound by any communication with Proposers other than the RFP, these General Terms and Conditions, Specifications and Scope of Work, Specifications, any written addendum's issued by District, District Policies and Procedures, and State Law.

5.6 The District shall be sole judge of what constitutes the best interest of the District.

5.7 The District reserves the right to reject proposals requiring minimum orders.

5.8 Fees charged for shipping and handling will be considered in awarding proposals.

5.9 Evaluation Criteria: In determining to whom to award a contract, the District shall consider in accordance with the Texas Education Code, Subchapter B, Section 44.031(b) Purchasing Contracts, Subsection (b): (1) the purchase price; (2) the reputation of the vendor and of the vendor's goods or services; (3) the quality of the vendor's goods or services; (4) the extent to which the goods or services meet the District's needs; (5) the vendor's past relationship with the District; (6) the impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses; (7) the total long-term cost to the District to acquire the vendor's goods or services;(8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:(A) has its principal place of business in this state; or (B) employs at least 500 persons in this state; and (9) any other relevant factor specifically listed in the request for bids or proposal.

5.10 Notice of Award (NOA): NOA/Tabulation information is available for download from our website at https://www.mcallenisd.org/apps/pages/index.jsp?uREC_ID=1097282&type=d&pREC_ID=1406975. Award information will be posted approximately ninety(90) days from proposal opening. Proposer must advise the District within 10 days from the date of award by the Board of Trustees of any errors requiring correction.

5.11 Qualified Ordering Entity: All campuses and departments are considered District users and qualified ordering entities. In some instances, other governmental entities may have Interlocal Contracts with the District. These entities may have access to the prices offered to District. Proposers are responsible for identifying and requesting information on these entities.

5.12 To expedite evaluation of the proposals, it is preferable that District forms be used.

5.13 Assignment: The awarded Proposer shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of District.

6. Insurance Requirements:

6.1 Statutory Workers' Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - $500,000.

6.2 Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job.

6.3 Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000; No deletions/exclusions from standard coverage form allowed without written consent of District. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

6.4 Successful Contractor will provide a certificate of insurance, in Acord 25 Form, to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason.

6.5 Each insurance policy to be furnished by successful bidder shall include, by endorsement to the policy, a statement that a notice shall be given to District by certified mail thirty (30) days prior to cancellation or upon any materials change in coverage.

6.6 Successful Contractor shall provide Certificates of Insurance evidencing the above- required insurance, prior to commencement of this contract and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. Said Notices and Certificates of Insurance shall be provided to Purchasing Services.

6.7 For non-subscribers that do not carry Workers' Compensation coverage, the District will, on a case-by-case basis, consider contractors who provide an Occupational Accident Policy, including Employers' Indemnity coverage with a $1,000,000 limit. However, the District reserves the right to require Workers' Compensation coverage if it feels it is in the best interest of the District to do so.

7. Price Changes: During the life of a contract only industry-wide published price changes as reflected in a manufacturer's printed price list, published documentation, or other approved method in an RFP may be submitted to the District for price adjustment consideration.

7.1 Procedures to Follow:

7.1.1 Firm Bids: No price increases allowed unless approved by DISTRICT in accordance with Section 7.2.

7.1.2 Catalog Bids: Submit a copy of the new manufacturer's price/cost list. Proposer shall compute new unit prices at the same percentage as reflected in the original proposal (See Sec. II. B. for formula). Prices will be verified for accuracy.

7.1.3 Requirement Contracts: No price increases allowed unless approved by DISTRICT in accordance with Section 7.2.

7.2 Acceptance of Price Increases: The District will accept or reject increases within seven (7) working days after receipt of a properly submitted request. If a properly submitted increase is rejected, Proposer may cancel such items from the contract by giving the District written notice. Cancellation will not go into effect for thirty (30) working days after receipt of the written request. Old prices must be honored on orders dated up to the official date of cancellation.

7.3 Price Decreases: Proposers are required to implement immediately any price decreases, roll backs, etc. that may become available. The District must be notified in writing of any decreases for file updating purposes and notice to contract users.

8. Administrative Procedure for Bid/Proposal Complaints: Members of the public having complaints regarding the District's purchasing procedures or operations may present their complaints or concerns to the District following this procedure. Please contact Purchasing Services for a copy of the

procedures at (956) 632-3241.

9. Invoicing:

9.1 Original invoices must be submitted in duplicate to the Accounting Department in compliance with the following procedure: INVOICES shall show purchase order number, copy of signed delivery ticket and proposal name and shall be mailed directly to:

McAllen Independent School District
ATTN: Director of Accounting
2000 North 23 Street
McAllen, TX 78501

9.2 The invoice must show name of Proposer exactly as shown on the purchase order and the correct "Remit to:" address.

9.3 Invoice must show name of receiving entity.

9.4 Invoice should include a description of each item. Items should be shown in numerical order and must correspond with the item numbers shown on the purchase order.

9.5 Quantity, unit and price of each item must be shown. All prices should be extended on the invoice.

9.6 Total all extensions on invoice.

9.7 Discount, if applicable, must be stated, extended and deducted to arrive at a NET TOTAL for invoice.

9.8 Shipment date of merchandise must be shown.

9.9 Date of purchase order must be shown.

10. Payment:

10.1 Payment normally will be made to Proposer within 30 days after receipt of a properly prepared original invoice or the receipt of and the acceptance of goods ordered, whichever is later.

10.2 Payments for merchandise purchased with District appropriated funds will be made through District approved and manually signed purchase orders issued by District's Purchasing Services. Payments by qualified ordering entities will be made through the District's Accounting System.

10.3 Partial payments are an exception, but may be made with the prior written approval of the District.

10.4 A purchase for goods or services cannot be made using District funds without prior approval from Purchasing Services in the form of an approved Purchase Order. All invoices shall reflect Purchase Order dates that are on or after Purchasing Services' final approval print date.

10.5 The District reserves the right to adjust any invoice which is in error due to incorrect quantity(s), printing errors or pricing of services or goods on this contract. Upon either written or verbal notification the provider will promptly adjust the error within thirty (30) days from the date the provider is notified of the error.

11. Cancellation:

11.1 Cancellation of Contract Orders: Orders are canceled in writing by the District. Orders may be canceled without the consent of Proposer for failure to meet contractual obligations. If cancellation is requested by District for some other reason, through no fault of Proposer, Proposer's permission to cancel is required. All correspondence from Proposer pertaining to the cancellation of an order is to be addressed to the District. In the event the awarded Proposer shall fail to perform, keep or observe any of the terms and conditions to be performed, kept or observed, District shall give the awarded Proposer written notice of such default; and in the event said default is not remedied to the satisfaction and approval of District within five (5) working days of receipt of such notice by the awarded Proposer, default will be declared and all the awarded Proposer's rights shall terminate.

11.2 Authorized Relief from Performance (Force Majeure): The District will grant relief, as necessary, from performance of the contract if Proposer is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Proposer. The burden of proof for the need of such relief rests with Proposer. To obtain release based on Force Majeure, Proposer must provide the District with sufficient documentation to show that suitable merchandise or service is unobtainable from any source.

11.3 Termination/Cancellation of Contract: The District reserves the right to cancel entire contract or any portion of a contract with any vendor that fails to perform in accordance with contract terms and conditions. The District and Proposer each shall have the right to terminate Contract without cause on thirty (30) days written notice to the other. The Contract will be monitored for acceptable services rendered throughout the contract period. The District will have the option to cancel the Contract within thirty (30) days from notification. In the event of any actual contract termination/cancellation, District will not be held responsible for loss of business or any termination expenses incurred by the vendor.

11.4 Non-Appropriation of Funds – The District intends to remit to the Contractor all payments for the full term if funds are legally available. In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the Payments for the services are due under any Agreement as a result of this RFP, the District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify the Contractor and any assignee of such occurrence. The Agreement(s) shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the Payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under the Agreement(s) relating to, accruing or arising prior to such termination. In the event of such termination, Contractor, at their expense, shall retrieve the equipment, effective on the date of such termination.

11.5 Termination for Default: District reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of District in the event of breach or default of this contract. District reserves the right to terminate the contract immediately in the event the awarded Proposer fails to:

11.5.1 Meet schedules;

11.5.2 defaults in the payment of any fees;

11.5.3 otherwise perform in accordance with these specifications.

11.6 Breach of contract or default authorizes District to exercise any or all of the following rights:

11.6.1 District may take possession of the assigned premises and any fees accrued or becoming due to date;

11.6.2 District may take possession of all goods, fixtures and materials of awarded Proposer therein and may foreclose its lien against such personal property, applying the proceeds toward fees due or thereinafter becoming due.

11.6.3 District reserves the right to award canceled contract to next lowest and best Proposer as it deems to be in the best interest of District. In such event, the District shall charge the canceled Proposer the difference for any additional cost of such proposal item(s) from the next lowest and best Proposer.

12 Other Provisions:

12.1 Texas state law requires that a purchasing preference be given to any product made from recycled material if the product meets written specifications as to quality and quantity. If a product proposal on this solicitation contains recycled material, please identify the item number and report the percent of all recycled material in the product and the percent of post-consumer material used in the product. "Post-consumer" means material that has been recycled after sale to a consumer as opposed to reuse of manufacturing waste material prior to sale. In addition, identify any products that meet the criteria of "Environmentally Sensitive." Information Request: Please send information on any products not listed in this contract that are related and available through your company which contain recycled material along with the percent of post- and pre- consumer content to:

McAllen Independent School District
ATTN: Purchasing Services
4309 Warrior Drive, Bldg. C.
McAllen, TX 78501-7734

12.1.1 When proposing, please consider the following:

12.1.2 Packing & Packaging: Use of the minimum amount of packing and packaging material consistent with assuring no damage to product in transit. The use of recyclable and recycled material content packing and packaging material is preferred.

12.1.3 New or Un-used: The terms shall not be interpreted to exclude the use of recycled content materials in products supplied. Nothing in a solicitation shall be construed to preclude the use of recycled content materials in a product regardless of any referenced specifications such as ANSI, ASTM, or Federal specifications so long as the material meets the performance requirements of such specifications and all required laws and regulations.

12.1.4 Material Safety Data Sheets: A Proposer must provide, at no cost, at least one copy of any applicable Manufacturer's Material Safety Data Sheet(s) (MSDS) with each shipment during the term of the contract. If OSHA or Federal or State laws provide for additional requirements, those requirements are in addition to the MSDS requirement. OSHA: All items must meet all applicable OSHA standards and regulations and all electrical items must bear the appropriate listing from UL, FMRC or NEMA.

12.1.5 Asbestos Management Plan: All proposers are required to review the Asbestos Management Plan for all District-owned facilities prior to performing any work or services at District-owned facilities. Asbestos Management Plans may be reviewed at each school site or at the Facilities Maintenance and Operations Department.

12.1.6 AHERA: All work must be in compliance with AHERA.

12.1.7 All contracts awarded in excess of $10,000 by school districts and their contractors or sub-grantees shall contain a provision requiring compliance with executive order 11246, entitled "Equal employment Opportunity", as amended by executive order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

12.1.8 All contracts and sub-grants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USD 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). This Act provides that each contractor or sub-grantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation, to which he is otherwise entitled. School districts shall report all suspected or reported violations to TEA.

12.1.9 All contracts awarded by school districts and sub-grantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of eight hours and a standard workweek of 40 hours. Work in excess of the eight hours per day or 40 hours per week shall be compensated at a rate of not less than 1 1/2 times the basic rate of pay. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor.

12.1.10 Contracts, subcontracts, and sub-grants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non- exempt federal contracts, grants, or loans of facilities included on the EPA list of violating facilities. The provision shall require reporting of violations to the Texas Education Agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

12.1.11 Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

12.1.12 Advertisement: Proposers are prohibited from using contract award information, sales values/ volumes and/or District customers in sales brochures or other promotions, including press releases.

12.2 Services/items supplied under this contract shall be subject to District's approval. Items found defective or not meeting specifications shall be picked up and replaced by the awarded Proposer at the next service date at no expense to District. If item is not picked up within one (1) week after notification, the item will become a donation to District for disposition.

13 Contract Provisions for contracts under Federal Awards – By submission of this proposal, Proposer agrees to comply with the following provisions.

13.1 Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where proposers violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

13.2 All contracts in excess of $10,000 must address termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.

13.3 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

13.4 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as

supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The entity must report all suspected or reported violations to the Federal awarding agency.

13.5 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

13.6 Rights to Inventions Made Under a Grants Contract or Cooperative Contract. If the Federal award meets the definition of "funding contract" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding contract," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," and any implementing regulations issued by the awarding agency.

13.7 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

13.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Proposers that apply or submit a proposal for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

13.9 An entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Any questions regarding this RFP must be submitted through the "questions" tab located within the solicitation on the Public Purchase website https://www.publicpurchase.com/gems/login/login.

SECTION B
SPECIFICATIONS AND SCOPE OF WORK

1.0 BACKGROUND

McAllen Independent School District (the "District") is a multicultural community of over 22,000 students. The District's vision 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. The District consists of nineteen (19) elementary schools, six (6) middle schools, three (3) traditional high schools, and two (2) non-traditional high schools.

Officers of the District are:

Conrado Alvarado, Trustee
Debbie Crane-Aliseda, Trustee
Lawrence Esparza, Trustee
Tony Forina, Trustee
Sam Saldivar, Jr., Trustee
Marco Suarez, Trustee
Daniel D. Vela, Trustee
Dr. Jose A. Gonzalez, Superintendent

2.0 INTENT

It is the intent of the District, through this Request for Proposal ("RFP"), to select Respondent(s) offering the best value for fire and intrusion alarm monitoring services.

3.0 REQUIREMENTS

The Specifications and Scope of Work ("SOW") will take precedence over the General Terms and Conditions when they are in conflict. Please read the General Terms and Conditions and the following information carefully. Any exceptions to these General Terms and Conditions and SOW may be cause for a Respondent to be disqualified.

4.0 TERM AND TERMINATION OF AGREEMENT

The period of the contract resulting from this RFP will be any of the following optional terms at the discretion of the District:

a) One (1) year with an option to renew for two (2) one (1) year periods.
b) Two (2) year period with an option to renew for one (1) year.
c) Three (3) year period.

District will select the option that best meets District's needs.

4.1 Termination without Cause. District shall have the right to terminate this contract ("Contract") without cause on thirty (30) days written notice to the Respondent ("Respondent").

4.2 Termination with Cause.

4.2.1 Termination by District. District may terminate this Contract immediately upon the occurrence of any of the following events:

4.2.1.1 Any conduct of the Respondent, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

4.2.1.2 Failure to provide evidence of liability insurance, as required.

4.2.1.3 Failure of Respondent to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

4.2.1.4 In addition, if the Respondent commits a material breach of any of the terms of

this Contract, other than those listed in subsections 4.2.1.1 through 4.2.1.3 above, District may terminate this Contract upon no less than thirty (30) days written notice.

4.3 Respondent shall not be entitled to lost profits or any further compensation not earned prior to the time of cancellation.

5.0 PRICING, INVOICING AND PAYMENT

The pricing program offered through this RFP must remain firm for the contract term from the date of award by the District Board of Trustees. Price decreases and/or discount percentage in favor of the District are acceptable at any time throughout the term of the contract. In case of a price increase required due to market shortage or market change, documentation must be submitted for approval to Alejandra Gonzalez, Director of Purchasing Services at alejandra.gonzalez@mcallenisd.net.

6.0 REFERENCES

Respondent shall obtain a minimum of three (3) references from other school districts for similar services. References must complete the "Reference Check Form" (Section K) and must include Respondent's knowledge, quality of work, timelines, diligence and flexibility.

7.0 EVALUATION CRITERIA

In determining who will be awarded, the District shall consider:

7.1 the purchase price;
7.2 the reputation of the vendor and of the vendor's goods or services;
7.3 the quality of the vendor's goods or services;
7.4 the extent to which the goods or services meet the district's needs;
7.5 the vendor's past relationship with the district;
7.6 the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses (in accordance with 2 CFR 200.320);
7.7 the total long-term cost to the District to acquire the vendor's goods or service;
7.8 for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
  7.8.1 has its principal place of business in this state; or
  7.8.2 employs at least 500 persons in this state; and
7.9 any other relevant factor specifically listed in the request for bids or proposals.

8.0 EVALUATION COMMITTEE.

The evaluation committee which will be comprised of Judith Escamilla, Executive Director of Technology Systems; Sam Juarez, Coordinator for Network Services; Daniel Rodriguez, Technician Electronic Equipment; Ruben Trevino, Executive Director of Facilities, Operations, and Maintenance, Ben Arredondo, FMO Supervisor Auxiliary Services; Alejandra Gonzalez, Director of Purchasing Services; and Elizabeth Cabrera, Purchasing Coordinator, will evaluate the proposals and recommend the successful Respondent(s).

9.0 COMMUNICATION WITH DISTRICT PERSONNEL

Respondent submitting a proposal shall not discuss this RFP with employees of District or members of the Board of Trustees. Communication includes, but is not limited to, unsolicited literature, email, faxes or phone calls related to any aspect of this RFP. If discussion is necessary, you will be notified in writing. Failure to abide by this requirement will result in automatic disqualification at the discretion of the District. All questions must be posted on Public Purchase (www.publicpurchase.com).

10.0 SCOPE OF WORK

10.1 Successful Respondent(s) shall furnish all labor, transportation, equipment, testing equipment, control equipment, and expertise necessary to maintain and provide monitoring services for fire and intrusion alarms in the District.

10.2 Monitoring services shall be provided by successful Respondent twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year.

10.3 All systems shall support cellular service communication as a primary source of communication and analog services as a secondary source of communication.

10.4 Fire and intrusion alarm shall support fail over functionality utilizing battery back-up for equipment.

10.5 Successful Respondent shall be responsible for any false alarms that are incurred due to equipment malfunction or acts of nature.

10.6 Successful Respondent shall provide, to the Department of Technology, procedures for the identification of false alarms and notification of proper authorities of the false alarm signal. All false alarm calls shall be directed to District's Police Department.

10.7 Scheduled inspections, maintenance, and repair must be in accordance with the most recent standards set forth by the National Fire Protection Agency (NFPA 72) and the City of McAllen's Fire Department Fire Prevention Standards.

- **10.7.1** Equipment shall be inspected annually
- **10.7.2** Preventative maintenance inspection shall be conducted on a monthly basis
- **10.7.3** Repairs shall be done as needed.

10.8 Successful Respondent shall maintain a Signal Transaction log for each location of all alarm signals and trouble codes. The Signal Transaction Report shall be provided by location, on an as needed basis and at no additional cost to the District.

- **10.8.1** Signal Transaction Report shall include the following minimum information:
  - **10.8.1.1** False alarms;
  - **10.8.1.2** Confirmed events;
  - **10.8.1.3** Lower battery signals;
  - **10.8.1.4** Trouble signals; and
  - **10.8.1.5** Communication signals
- **10.8.2** Signal Transaction Report shall be arranged as follows:
  - **10.8.2.1** By date;
  - **10.8.2.2** Date range and/or month; and
  - **10.8.2.3** Shall identify specific device and location within building
- **10.8.3** Signal Transaction Report shall be provided at the end of each month as follows:
  - **10.8.3.1** Shall be by location;
  - **10.8.3.2** Shall provide within five (5) business days; and
  - **10.8.3.3** Shall be submitted to authorized person(s) to be named at a later date

10.9 Successful Respondent shall provide programmed daily communication tests on all systems to District's authorized person(s).

10.10 Service calls shall be addressed within four (4) hours of the call, and repair of service calls shall be completed within 24 hours.

10.11 District reserves the right to award the contract to one (1) or more vendors.

10.12 Locations:

- **10.12.1** See Exhibit 1 - Fire Alarm Locations
- **10.12.2** See Exhibit 2, Intrusion Alarm Locations

10.13 Proposal shall include itemized descriptions of all the services and routine maintenance to be performed and included in the monthly fee (refer to attached Questionnaire, #6. Services).

10.14 The following is a list of the minimum maintenance services to be provided:

- **10.14.1** Check panel both AC16.5 volts (power)

10.14.2 Check battery backup to the 12Volts DC (power)
10.14.3 Check power supply 12.5Volts DC (power)
10.14.4 Check cellular line communication to District's Police Dept
10.14.5 Check all signals are received at District's Police Dept
10.14.6 Check backup phone line and communication to District's Police Dept
10.14.7 Check all key pads, motion detectors, door contacts, glass break, zone expansion modules
10.14.8 Check all power, backup DC power modules and direct AC power
10.14.9 Check for any wiring, equipment, that may be damaged

At any time during inspection, repair, or maintenance service calls, successful Respondent shall notify the following District staff of any damages not under warranty: Judith Escamilla at judith.escamilla@mcallenisd.net and Danny Rodriguez at danny.rodriguez@mcallenisd.net

10.15 Respondent shall complete Exhibit 3. Price Sheet.

10.16 Respondent shall list the hourly rate for any "as needed" repair work for the alarm systems (refer to attached Questionnaire, #6)

10.17 Pricing shall include the following:
10.17.1 Twenty-four (24) hour Underwriters Laboratories (UL) listed
10.17.2 Central Station Monitoring for forty-two (42) locations Fire/Life Safety Systems
10.17.3 Annual UL certification fees.
10.17.4 Intrusion alarm monitoring for forty-four (44) locations.
10.17.5 Testing and license fees that may be required by the City of McAllen, and/or by state or federal laws.
10.17.6 Ongoing routine maintenance costs.
10.17.7 Support for programming, maintenance and repair.
10.17.8 Any other normal routine maintenance for the fire and intrusion alarm panels as noted by the respective industries.
10.17.9 The use of skilled, trained, and licensed personnel as outlined in the Texas Department of Public Safety (TxDPS) Private Security Program.
10.17.9.1 All personnel shall be supervised and directly employed by the Vendor.

10.18 Do not include fire sprinkler testing or any quarterly, semi-annual, or annual inspections etc. of the fire sprinkler system.

10.19 Any repairs for fire alarms must be authorized in writing, by the authorized District staff from the District's Facilities, Maintenance & Operations Department.

10.20 Any repairs for intrusion alarms must be authorized in writing, by the authorized District staff from the District's Department of Technology.

10.21 Successful Respondent(s) will issued an emergency contact list, which will contain the names of the authorized District staff after award of contract. In cases of emergency, a verbal authorization from the authorized Districts' staff shall be acceptable. The District reserves the right to add or delete names to emergency contact list at no additional cost.

10.22 Hours for inspection/repair: Successful respondent shall coordinate inspections, repairs, and/or any other services covered on this proposal as follows:
10.22.1 Fire alarm and associated component services: Facilities, Maintenance & Operations Department
10.22.2 Intrusion alarm and associated component services: Department of Technology
10.22.3 Days and times available for inspection: Monday through Friday (M-F) 8:00am - 5:00pm, some exceptions may apply.

10.23 Successful respondent shall be required to execute a service contract agreement upon Notice of Award (refer to Section C "Draft Contract").

11.0 AWARD INFORMATION

Award information will be available for download from our website within ninety (90) days of opening: (https://www.mcallenisd.org/apps/pages/index.jsp?uREC_ID=1097282&type=d&pREC_ID=1406975).

10.0 INSTRUCTIONS FOR SUBMITTING A BID

In light of the current state and national emergency, the District has activated Stage 3 Action Plan, which requires District employees to work remotely. The District will only be accepting sealed electronic submittals for this project and the only method of submittal shall be electronically via the Public Purchase portal at: https://www.publicpurchase.com. Hand delivered and/or mailed bids will not be accepted.

Include ONLY the following forms with your submittal:

- Section C - Questionnaire (PDF-fillable form)
- Section D - Price Sheet and Signature Page (PDF-fillable form)
- Section G - Completed Contractor's Certifications Form (PDF-fillable form)
- Section H - Completed W-9 Form (PDF-fillable form)
- Section I - Completed Conflict of Interest Form (PDF-fillable form)
- Section J - Completed Deviation/Compliance Form (PDF-fillable form)
- HB 1295 Form– MUST BE COMPLETED ONLINE
  http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

The District encourages all Respondents to submit information only on forms provided through this RFP. Failure to submit the forms/information listed above may be cause for disqualification of bid. Do not include unsolicited information such as pamphlets, company form letters, etc. with your bid response.

SECTION C
QUESTIONNAIRE

McALLEN INDEPENDENT SCHOOL DISTRICT
RFP 2020-264 – Fire and Intrusion Alarm Monitoring Services
QUESTIONNAIRE

1. Name of company, mailing address, company history and size.

2. Name, title, email address, and phone number of authorized representatives for general monitoring service questions.

3. Name, title, email address, and phone number of a single point-of-contact for invoicing questions.

4. List a maximum of five (5) school district/government clients similar to the District and similar to the scope of work listed herein, for which you have provided or are providing services.

Name of Entity	Contact Person/Phone No.	Services Rendered/Rendering	Dates of Service

5. Projects– Provide a list of relevant, past or current, projects for District within the last five (5) years.

Name of Project	Contact Person/Phone No.	Services Rendered/Rendering	Dates of Service

Questionnaire Continued:

6. Services – The following is a list of the minimum maintenance services to be provided:
    - Check panel both AC16.5 volts (power)
    - Check Battery Backup to the 12Volts DC (power)
    - Check Power Supply 12.5Volts DC (power)
    - Check cellular line communication to MISD's Police Dept
    - Check all signals are received at MISD's Police Dept
    - Check Backup phone line and communication to MISD's Police Dept
    - Check all Key Pads, Motion Detectors, Door contacts, Glass Break, Zone expansion Modules
    - Check all Power, Backup DC power modules and direct AC power
    - Check for any wiring, equipment, that may be damaged

    List any additional services to be performed and provided as part of routine maintenance services. Include hourly rate for any "as needed" repair work for the alarm systems.

SECTION D

PRICE SHEET &

SIGNATURE PAGE

FIRE ALARM AND INTRUSION ALARM MONITORING AND SERVICES
PRICE SHEET

	DESCRIPTION	QTY	UNIT PRICE	MONTHLY FEE	List any exceptions to the District's requested Services:
1	Fire Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for one (1) Year Contract (12 months)**	42			
2	Fire Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for two (2) Year Contract (24 months)**	42			
3	Fire Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for three (3) Year Contract (36 months)**	42			

	DESCRIPTION	QTY	UNIT PRICE	MONTHLY FEE	List any exceptions to the District's requested Services:
1	Intrusion Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for One (1) Year Contract (12 months)**	43			
2	Intrusion Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for Two (2) Year Contract (24 months)**	43			
3	Intrusion Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for three (3) Year Contract (36 months)**	43			

McAllen Independent School District
Bid No. 2020-264 – Fire Alarm and Intrusion Alarm Monitoring Services
Price Sheet Signature Page

Authorized Signature: _____

Representative Name: _____

Title: _____

Legal Company Name: _____

Address: _____

City/State/Zip: _____

Phone No.: _____

Cell No.: _____

Fax No.: _____

E-mail: _____

Website: _____

SECTION E

Fire Alarm Locations

Fire Alarm Locations

LOCATIONS	ADDRESS	PANEL
Administration Building	2000 North 23rd. Street	Silent Knight 5820 XL
H.R. Administration Building	2200 Tamarack Ave	Silent Knight 6820
Thigpen Bldg. (In Take Center)	520 South 23rd. St.	Cerberus Pyrotronics MXL-IQ
I&G at Bowie Campus	2604 Galveston	Slient Knight 5820
Crockett Command Center	2112 N. MAIN STR.	EDWARD EST-IQ-500
FM&O (Central Kitchen)	4309 Warrior Avenue	EDWARD QS4
New Transportation Dept.	4309 Warrior Avenue	EDWARD EST-1064
McAllen ISD Football Stadium	2001 North Bicentennial	EDWARD EST-3
Special Educational Bldg.	1619 Galveston Street	Fire-Lite, MS-5UD-3
Austin Elem School Bldg.	2100 Fir Ave.	Slient Knight 6700
McAllen High School	2021 La Vista Ave.	EDWARD EST-3
Memorial High School	101 East Hackberry	Silent Night 5820XL
Rowe High School	2101 North Ware Road	FARENHYT, IFP-2000 ECS
Lamar - Option In Ed.	1009 North 10th Street	Silent Knight 5820XL-EVS
Achieve Early C.H.S./Lincoln	1601 North 27th Street	Silent Knight 5820XL-EVS
Brown Middle School	2700 South Ware Road	Silent Knight #5820XL
Cathey Middle School	1800 North Cynthia Street	Cerberus Pyrotronics MXL-IQ
De Leon Middle School	4201 North 29th Street	NOTIFIER, 3030D
Fossum Middle School	7800 North Ware Road	Siemans MXL
Morris Middle School	1400 Trenton Road	Silent Knight #5820XL-EVS
Travis Middle School	600 Houston Street	EST, QUICK-START QS1
Alvarez Elementary	2606 Gumwood Street	Silent Knight #5820XL-EVS
Bonham Elementary	2400 Jordan Street	Silent Knight #5820XL-EVS
Castaneda Elementary	4100 North 34th Street	CERBERUS PYROTRONICS MXL-IQ
Escandon Elementary	2901 North Colbath Street	Silent Knight #5820XL-EVS
Fields Elementary	500 West Dallas Avenue	EST, QUICK-START QS1
Garza Elementary	6300 North 29th Street	Silent Knight 6820
Gonzalez Elementary	201 East Martin Street	Silent Knight #5820XL
Hendricks Elementary	3900 Gold crest Street	EDWARDS, EST-3
Houston Elementary	3221 Olga Street	Silent Knight #5820XL-EVS
Jackson Elementary	501 Harvey Street	Cerberus Pyrotronics MXL-IQ
McAuliffe Elementary	3000 Daffodil Street	Silent Knight # 5820XL
Milam Elementary	3800 North Main Street	Silent Knight # 5820XL
Navarro School Bldg.	2100 Hackberry Street	Siemans MXL-IQ
Perez Elementary	7801 North Main Street	EDWARDS, EST-3
Rayburn Elementary	7000 North Main Street	Silent Knight # 5820XL
Roosevelt Elementary	4801 South 26th Street	Silent Knight # 5820XL
Sanchez Elementary	2901 Incarnate Word Ave.	EDWARDS, EST3
Seguin Elementary	2200 North 29th Street	Silent Knight #5820XL-EVS
Thigpen / Zavala Elementary	2500 Galveston Avenue	EDWARDS, QS-1
Wilson Elementary	1200 Hackberry Street	Silent Knight #5820XL-EVS

SECTION F

Intrusion Alarm Locations

Intrusion Alarm Locations

LOCATIONS	ADDRESS	ROOM #	PANEL
Academics Portabl 79	200 N 23RD STREET	RR	NAPCO 1632
Admininstration Bldg.	200 N 23RD STREET	COPY RM	NAPCO 1632
Alvarez Elem.	2606 GUMWOOD AVENUE	34D MECH	NAPCO 9600
Bonham Elem.	2400 JORDAN ROAD	D MECH	NAPCO 1632
Brown Middle	2700 S WARE ROAD	A07 TEST ROOM	NAPCO 1632
Castaneda Elem.	4100 N 34TH STREET	A19 STOR	NAPCO 1632
Central Kitchen/Warehou	4309 WARRIOR AVENUE	IDF	NAPCO 9600
Crockett Anix	2112 N MAIN STREET	BACK STAGE	NAPCO 1632
De Leon Midd.	4201 N 29TH	107 SEC OFFICE	NAPCO 9600
Dr. Cathey Midd.	1800 N CYNTHIA STREET	142 STOR LIBRARY	NAPCO 9600
Escandon Elem.	2901 COLBATH AVENUE	D13 MECH/CUST	NAPCO 1632
Federal Program Portable	2112 NORTH MAIN ST	COPY RM	NAPCO 1632
Fields Elem.	500 DALLAS AVENUE	A109 IDF	V-128
Fossum Midd.	7800 N WARE ROAD	D105 IDF	V-250BP
Garza Elem.	6300 N 29TH STREET	61A MECH	NAPCO 9600
Gonzalez Elem.	201 E AMRTIN AVENUE	111A STOR	NAPCO 1632
Information systems	2112 NORTH MAIN	KNOCK	NAPCO 9600
Instructional Guidance	2600 GALVENSTON	3A MECH	NAPCO 1632
Special Ed Dept.	1619 GALVESTON	ATTIC	NAPCO 1632
International Baccabureat	1009 N 10TH STREET	101B MECH	NAPCO 9600
Jackson Elem.	501 W HARVEY AVENUE	A1A MECH	NAPCO 1632
Achieve Early Collage	3200 W PECAN BLDG M	A04 STOR	NAPCO 1632
Lucile Mckee Hendricks	3900 GOLDCREST AVE	A108	DSC 420
Mcallen H. S.	2021 LA VISTA AVENUE	162 CUST	NAPCO 9600
Mcauliffe Elem	300 W DAFFODIL AVENUE	123 MECH	NAPCO 9600
Memorial H. S.	101 E HACKBERRY AVENUE	PHONE RM LOUNG	GEM 255X
Milam Elem.	3800 N MAIN STREET	206 MECH	NAPCO 1632
Morris Midd.	1400 TRENTON RD	A11 MECH	NAPCO 1632
Navarro Elem	2100 W HACKBERRY	A5 RECEPT	NAPCO 9600
Nikki Rowe H. S.	2101 N WARE ROAD	A34 MECH	GEM 255X
Perez Elem.	7801 N MAIN STREET	B101 MDF	NAPCO 9600
Human Resource	2000 N 23RD STREET	IDF MECH	NAPCO 1632
Rayburn Elem.	7000 N MAIN STREET	02 STOR	NAPCO 1632
Roosevelt Elem.	4801 S 26TH STREET	M-2 MECH	NAPCO 9600
Sam Houston Elem.	3221 OLGA AVENUE	206 MECH	NAPCO 9600
Sanchez Elem.	2901 INCARNATE AVENUE	B101 MDF	NAPCO 9600
Seguin Elem.	2200 N 29TH STREET	E 1A MECH	NAPCO 9600
Student Alternative	520 S 23RD STREET	OFFICE AREA	NAPCO 1632
Thigpen Zavala Elem.	2500 GALVESTON AVENUE	A109 IDF	V-128
Transportation Dept.	4309 WARRIOR AVENUE	HALWAY	NAPCO 1632
Travis Midd.	600 W HOUSTON AVENUE	L03 WORK RM	NAPCO 9600
Wilson Elem.	1200 HACKBERRY AVENUE	139 STORG	NAPCO 1632
Migrant	2112 N MAIN STREET	G1	NAPCO 1632
Portable 69	2000 N 23RD STREET	Break RM	NAPCO 1632

SECTION G

CONTRACTOR CERTIFICATION FORM

CONTRACTOR CERTIFICATION FORM
(Return signed form with your submittal)

1. Felony Conviction Notification

Texas Education Agency Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states, "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." This notice is not required of a publicly held corporation.
Initial where applicable.

☐ A. My company is a publicly held corporation; therefore, this reporting requirement is not applicable.

B. My company is not owned nor operated by anyone who has been convicted of a felony.

C. My company is owned and operated by the following individual(s) who has/have been convicted of a felony:
Name of Felon(s): _____

Details of Conviction(s): _____

2. Criminal History Record Information Review of Certain Contract Employees

By signing below, the Bidder agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. The undersigned Bidder, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. The Bidder agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. The Bidder further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.

☐ None of my employees and any of my subcontractors has or will have continuing duties related to the contracted services; and has or will have direct contact with students. I further certify that my company has taken precautions or imposed conditions to ensure that my employees and any subcontractor will not have continuing duties related to the contracted services; and will not have direct contact with students throughout the term of the Contract.

OR

☐ Some or all of my employees and/or my subcontractors will have continuing duties related to the contracted services; and will have direct contact with students. I further certify that:

1. I have obtained all required criminal history record information regarding all of my employees and/or my subcontractors. None of my employees and/or my subcontractors has any conviction or other criminal history information if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. **If available, attach a copy of your FAST Pass Receipt.**
2. If I receive information that any of my employees and/or subcontractors subsequently has a reported criminal history, I will immediately remove the covered employee from contract duties and notify the District in writing immediately.
3. I will provide the District with the names and any other requested information regarding any of my employees and/or subcontractors so the District may obtain criminal history record information if awarded a contract.
4. If the District objects to the assignment of any of my employees and/or subcontractors, I agree to discontinue using the individual to provide services to the District.

3. Debarment and Suspension (Executive Orders 12549 and 12689)

By signing below Contractor certifies that neither it nor its principals are currently listed on the government-wide exclusions in SAM as debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractor further agrees to immediately notify the District if he/she is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

4. Confidential/Copyrighted Information

By signing below, the Contractor agrees, if a bid is, or parts of bid is confidential, the Contractor has specified by stamping in bold letters the term **"CONFIDENTIAL"** on all or the confidential part of the bid. The bid may be considered public information even though all or parts are marked confidential. Furthermore, Contractor agrees a copyrighted bid is unacceptable and will be disqualified as unresponsive.

5. Declaration of Business Location - Texas Education Code 44.031(b)(8)

By signing below, Bidder certifies the Bidder's or the Bidder's ultimate parent company or majority owner:

☐ A. Has its principal place of business in the State of Texas; **OR** ☐ B. employs at least 500 persons in the State of Texas

☐ C. Principal place of business is not in the State of Texas: _____
(City, State)

6. Owner(s) Name of Business

By signing below, Bidder certifies the owner(s) name of the business submitting bid is/are (Please print name(s) below. If not applicable, please indicate N/A.)

_____ _____

_____ _____

_____ _____

7. Delinquent Taxpayers

In accordance with law, the District shall not enter into a contract or other transaction with a person indebted to the District, nor shall the District award a contract to or enter into a transaction with an apparent low bidder or successful proposer indebted to the District.

[ ] I am not a delinquent taxpayer to McAllen ISD

[ ] I am a delinquent taxpayer to McAllen ISD *(your bid may be disqualified if your debt is not cleared prior to award.)*

8. Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firm

Contractor certifies the Bidder's company is HUB certified with the State of Texas.

[ ] I am an Active certified HUB vendor. HUB expiration date: _____

[ ] Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms

[ ] I am neither.

9. Buy America Provisions

By signing below, Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

10. Entities That Boycott Israel:

If Bidder is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Bidder certifies that Bidder does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Bidder does not make that certification, Bidder must indicate that in its Response and state why the certification is not required.

11. Federally Funded Purchases

By signing below, Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases (see attached "Federally Funded Purchases" form.

I, the undersigned authorized agent for the company named below, certify that the information concerning Sections 1-10 listed above has been reviewed by me and the information furnished is true to the best of my knowledge. I further certify that I agree to comply with Sections 1-11 listed above.

COMPANY NAME: _____

AUTHORIZED AGENT'S NAME (PRINTED): _____

SIGNATURE OF COMPANY OFFICIAL: _____

Contract Provisions for contracts under Federal Awards – Contractor agrees to comply with the following provisions.

- Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts in excess of $10,000 must address termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.
- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The entity must report all suspected or reported violations to the Federal awarding agency.
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the

purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of $250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or submit an offer for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.
- A an entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- Buy American Provision

SECTION H
W-9 FORM

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

► **Go to *www.irs.gov/FormW9* for instructions and the latest information.**

Give Form to the requester. Do not send to the IRS.

Print or type. See **Specific Instructions** on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ►

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN,* later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			–			–				

or

Employer identification number

		–							

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	**Signature of U.S. person** ►	**Date** ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting,* later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.

2. The treaty article addressing the income.

3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,

2. You do not certify your TIN when required (see the instructions for Part II for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code,* later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships,* earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code,* later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over $600 required to be reported and direct sales over $5,000[1]	Generally, exempt payees 1 through 5[2]
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester,* later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at *www.SSA.gov*. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/Businesses* and clicking on Employer Identification Number (EIN) under Starting a Business. Go to *www.irs.gov/Forms* to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to *www.irs.gov/OrderForms* to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code,* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account[1]
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor[2]
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee[1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner[1]
6. Sole proprietorship or disregarded entity owned by an individual	The owner[3]
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	**Give name and EIN of:**
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity[4]
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

[4] List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships,* earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov.* You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at *spam@uce.gov* or report them at *www.ftc.gov/complaint.* You can contact the FTC at *www.ftc.gov/idtheft* or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see *www.IdentityTheft.gov* and Pub. 5027.

Visit *www.irs.gov/IdentityTheft* to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

SECTION I

CONFLICT OF INTEREST QUESTIONNAIRE (CIQ) FORM

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____

Signature of vendor doing business with the governmental entity Date

SECTION J
DEVIATION/COMPLIANCE FORM

DEVIATION/COMPLIANCE FORM

An authorized company representative must sign this form to indicate compliance with the Scope of Work, Award/Evaluation of Proposals, Certifications, Shipping and Delivery, Terms and Conditions, and all other information contained in this solicitation. All deviations shall be listed on this page, with complete detailed conditions and information included or attached. The District will consider any deviations in its award decisions, and the District reserves the right to accept or reject any response based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this form, the respondent assures the District of their full compliance with the Scope of Work, Award/Evaluation of Proposals, Certifications, Shipping and Delivery, Terms and Conditions and any other information contained in this solicitation.

List deviations below (attach additional sheets, if needed):

_____

_____

_____

_____

_____

_____

Authorized Signature: _____

Representative Name: _____

Title: _____

Legal Company Name: _____

Address: _____

City/State/Zip: Phone _____

No.: _____

Cell No.: _____

Fax No.: _____

E-mail: 355 _____

Website: _____

SECTION K
REFERENCE FORM

Alejandra Gonzalez
Director of Purchasing Services
956-632-3241

DISTRICT REFERENCE FORM

Request for Proposal No. 2020-264 Fire and Intrusion Alarm Monitoring Services

Please complete this reference form for the following firm/company:

Name of Business	**Contract Term**

1. The quality of the firm's service.
   - ☐ Excellent
   - ☐ Good
   - ☐ Fair
   - ☐ Poor

   Comments: _____

2. Timeliness of project
   - ☐ Excellent
   - ☐ Good
   - ☐ Fair
   - ☐ Poor

   Comments: _____

3. Will you continue doing business with this vendor?
   - ☐ Yes
   - ☐ No

   Why or why not? _____

4. How satisfied is your organization?
   - ☐ Yes
   - ☐ No

   Comments: _____

Reference prepared by:

Name of Organization Submitting Reference Form	Signature
Title	Printed Name
Email Address and Phone Number	Date Completed

SECTION L
DRAFT CONTRACT

MCALLEN INDEPENDENT SCHOOL DISTRICT
CONTRACT No. 2020-264 Fire and Intrusion Alarm Monitoring Services

This contract ("Contract") is made and entered into by and between the **McALLEN INDEPENDENT SCHOOL DISTRICT** (hereinafter referred to as "District") and XXXXX, a XXXX Limited Liability Company (hereinafter referred to as "Contractor") as of the date of execution (the "Commencement Date") by the District as shown on the signatory page of this Contract.

WITNESSETH:

WHEREAS, District requested quotes from vendors for an electronic payment system for athletic events ("Services"), and

WHEREAS, Contractor submitted a quote to meet the needs of the District.

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. **OBLIGATIONS OF THE CONTRACTOR**

Contractor shall perform all of the work and provide all equipment, materials and labor required in accordance with the terms and conditions of the Contract Documents, as hereinafter defined.

Contractor represents and warrants to District that Contractor possesses all of the licenses, permits and expertise required to provide the equipment, materials and labor and perform the services contemplated hereunder. Contractor warrants and represents that during the term of this Contract, Contractor shall maintain all such licenses and permits. Contractor warrants that the services rendered and equipment, materials and labor furnished shall be in accordance with the terms of the Contract Documents.

The term Contract Documents as used herein shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract. The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

A. This Contract

B. Exhibit "A" – Contractor's Services

C. Exhibit "B" – Fees

D. Exhibit "C" – Contractor's Certificate of Insurance

This Contract is entered into subject to the following conditions:

A. Contractor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees of District and /or the learning environment of students of District while performing its work in accordance with the Contract Documents.

B. Contractor assumes full responsibility and liability for all labor and materials furnished and activities conducted by Contractor pursuant to this Contract and any action or omission incident thereto.

2. INSURANCE COVERAGE

At all times during the term of this Contract, Contractor will, at Contractor's expense, carry and maintain the following insurance coverages with the minimum coverage amounts as follows:

A. Statutory Workman's Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

B. Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job.

C. Business Commercial Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000; No deletions/exclusions from standard coverage form allowed without written consent of District. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

D. The Contractor will provide a certificate of insurance to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason. Such Certificate of insurance shall be attached to this Contract as Exhibit C.

3. TRANSFER, ASSIGNMENT, ETC.

Contractor agrees, for itself and on behalf of its successors, and any person or persons claiming under Contractor by virtue hereof, that this Contract and the rights, interests, and benefits hereunder cannot be assigned, transferred, pledged, or hypothecated in any way and shall not be subject to execution, attachment, or

similar process. Any such attempt to do so, contrary to the terms hereof, shall be null and void and shall relieve the District of any and all obligations or liability hereunder.

4. ADJUDICATION

If any provision, paragraph, or subparagraph of this Contract is adjudged by any court of law to be void or unenforceable, in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of the Contract, including any other provision, paragraph, or subparagraph.

5. PROVISIONS, PARAGRAPHS

Each provision, paragraph, and subparagraph of this Contract is declared to be separable from every other provision, paragraph, and subparagraph and constitutes a separate and distinct covenant.

6. PAYMENT

As consideration for performing the services and supplying the equipment, materials and labor pursuant to the Contract Documents, District agrees to pay Contractor a cost consistent with the pricing agreed upon, a copy of which is attached hereto as Exhibit "B" and is incorporated herein for all purposes. The payment for services, materials and labor shall be paid by District to Contractor as invoiced upon successful and satisfactory installation of equipment and materials pursuant to the Contract Documents upon verification by District's authorized representative of such invoice in compliance with the Contract Documents.

7. TAXES AND BENEFITS

Contractor expressly acknowledges that Contractor will be acting as an independent contractor for all purposes, including payment of social security, withholding taxes and all other federal, state and local taxes. Contractor, as independent contractor, shall be solely responsible to its employees, agents, third party contractors any other person supplying labor or material for Contractor in performing any portion of this Contract or any action or omission incident thereto. Contractor also agrees to pay for and provide workers compensation insurance covering all employees working for Contractor in performing labor pursuant to this Contract or any activity incident thereto.

8. INCURRING FINANCIAL OBLIGATION

The Contractor will incur no financial obligation on behalf of District without prior written approval of the Superintendent of District. The Contractor will be responsible for all personal and professional expenses.

9. ACCESS TO BOOKS AND RECORDS

Contractor recognizes that District is a participant in governmental payment programs. In connection with such programs, the Contractor agrees to cooperate with District and provide to District reasonable assistance in District's efforts to meet the requirements for participation in and payment under such programs.

10. NON-DISCRIMINATION

Contractor will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing services under this Contract or in the selection of associates, employees, or independent contractors.

11. HOLD HARMLESS

Contractor agrees to hold harmless and indemnify District from any liability and/or damages which may directly or indirectly arise from or occur in connection with Contractor's performance under this Contract or any action, activity or omission incident thereto. Such indemnification shall include but not be limited to all District's attorneys' fees and costs incurred in defending or responding to any action brought or threatened against District for any action or omission arising from or incident to Contractor's performance under this Contract.

12. TERM AND TERMINATION OF CONTRACT

Term. The term of this Contract shall commence on the Commencement Date and remain effective for a term of one (1) year, with the option to renew for three (3) additional one (1) year terms. All services must be completed during the term of the Contract.

A. **Termination without Cause**. District shall have the right to terminate this Contract without cause on thirty (30) days written notice to the Contractor.

B. Termination with Cause.

a. Termination by District. District may terminate this Contract immediately upon the occurrence of any of the following events:

i. Any conduct of the Contractor, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 9 hereof.

iii. Failure of Contractor to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

iv. In addition, if the Contractor commits a material breach of any of the terms of this Contract, other than those listed in subsections (i) through (iii) above, District may terminate this Contract upon no less than thirty (30) days written notice.

b. Termination by Contractor. In the event District breaches any material term of this Contract, Contractor may terminate this Contract upon no less than fifteen (15) days written notice.

c. Non-Interference. Following the expiration of this Contract or its termination for any reason, Contractor agrees to do nothing that may interfere with any contract of District with any other individual or entity for the provision of the services herein.

13. NOTICES

All notices provided to be given under this Contract shall be given in writing and will be deemed delivered when deposited in the United States Postal Service by certified or registered mail, addressed to the proper party, at the following addresses:

If to District: McAllen Independent School District
Attn: Jose A. Gonzalez, Superintendent
2000 N. 23rd Street
McAllen, Texas 78501

If to Contractor:

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this section.

14. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS CONTRACT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THIS CONTRACT ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS.

15. NO IMPLIED WAIVER

No waiver or modification of the Contract Documents shall be valid unless it is in writing and signed by the District and Contractor.

16. SEVERABILITY

The invalidity or unenforceability of any provisions of this Contract will not affect the validity or enforceability of any other provision.

17. ASSIGNABILITY

The right and obligations of District hereunder shall inure to the benefit of and be binding upon the successors and assigns of District. The Contractor may not assign Contractor's rights or obligations under this Contract without District's written consent. Any assignment in violation of this provision shall give District the right to terminate this Contract immediately, upon written notice to the Contractor.

18. AMENDMENTS

All provisions of the Contract Documents shall be strictly complied with and performed by Contractor; and no amendment to this Contract shall be made except upon the written agreement by the parties. No amendment shall be construed to release either party from any obligation, representation and/or warranty of the Contract Documents except as specifically provided for in such amendment.

19. ENTIRE CONTRACT

This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof. This Contract supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the subject matter the Contract.

20. INTERPRETATION

The defined terms used herein are for convenience only and do not limit the contents of this Contract.

21. VARIATIONS OF PROUNOUNS

All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

22. AUTHORIZATION FOR CONTRACT

The execution and performance of this Contract by District and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes the valid and enforceable obligations of Contractor and District in accordance with its terms.

DRAFT

23. IMMUNITIES

Nothing in this Contract is intended to and District does not hereby waive, release or relinquish any right to assert any of the defenses District enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to District as to any claim or action of any person, entity, or individual against District.

24. NON-APPROPRIATION OF FUNDS.

In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the payments for the services are due under this Contract, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Contractor and any assignee of such occurrence. This Contract shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under this Contract relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Contractor or its assignee stop the services on the date of such termination.

25. Family Educational Rights and Privacy Act (FERPA).

Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent except as provided in the Family Educational Rights and Privacy Act (FERPA).

26. CRIMINAL HISTORY INFORMATION.

Pursuant to Texas Education Code Section 22.0834, Contractor shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of the Contractor if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the contracted services herein, and the duties are or will be performed on school property or at another location where students are regularly present. Contractor shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process was followed.

Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District's property or other location where students are regularly present, District shall be the final decider of what constitutes a "location where students are regularly present." Contractor's violation of this section shall constitute a material breach of contract. If the Contractor is the person or owner or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence of compliance acceptable to District, with this Contract.

27. ENTITIES THAT BOYCOTT ISRAEL

If Contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Contractor does not make that certification, Contractor must indicate that in its Response and state why the certification is not required.

28. Sec. 2252.152 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.

A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

Sec. 2252.153. LISTED COMPANIES. The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

Sec. 2252.154. EXCEPTION. Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3. This Act takes effect September 1, 2017.

29. BREACH OF CONTRACT AND FEES

If either party hereto shall breach any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including attorney's fees, incurred by such party in enforcing the terms of this Contract.

30. FURTHER DOCUMENTS

The parties hereto covenant and agree that they will execute such other and future instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

31. BINDING NATURE

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

32. CONTRACT TERMS CONTROL

The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

33. PAYMENT AND PERFORMANCE BONDS

Performance bonds are required for bids/proposals in excess of One Hundred Thousand Dollars ($100,000). Payment Bonds are required for bids/proposals in excess of Twenty-five Thousand Dollars ($25,000). When a performance or payment bond is required, the amounts shall be for 100% of the contract amount (including contingency). Any required bond(s) must be filed with the District within ten (10) days from the date of the Notice of Award. The only form of surety acceptable as a performance or payment bond is a Surety or Blanket Bond from a company chartered or authorized to do business in Texas. Bonds completed (signed) by an out-of-Texas surety require a counter signature by a Texas resident agent of a company chartered or authorized to do business in Texas. Bonds and other forms of surety must be made payable to McAllen Independent School District. Bonds in excess of One Hundred Thousand Dollars ($100,000.00) must be from a surety that holds a Certificate of Authority from the United States Department of Treasury or have reinsurance for liability in excess of One Hundred Thousand Dollars ($100,000.00) from a United States Treasury listed reinsurer. Payment and Performance Bonds must be in accordance with Texas Government Code 2253.

DRAFT

IN WITNESS WHEREOF, the execution and performance of this Contract by each of the parties hereto have been duly authorized by all necessary laws, resolutions, ordinances, or governing body action, and this Contract constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms.

EXECUTED this _____ day of _____, 2020.

DISTRICT:

McAllen Independent School District

By: _____

Marco Suarez, Board President

Vendor

By: _____

Name: _____

Approved as to form:
Atlas Hall & Rodriguez, LLP by: _____
Stephen L. Crain

DRAFT

Exhibit "B" – Vendor's Services, Products and Fees Pursuant to

Request for Proposal No. 2020-264

McALLEN INDEPENDENT SCHOOL DISTRICT

August 18, 2020

Mr. Alan Yoder
alan@superioralarms.com

RE: BEST AND FINAL OFFER – Request for Proposal No. 2020-264 Fire and Intrusion Alarm Monitoring Services

Dear Mr. Yoder,

Thank you for participating in the District's Request for Proposal No. 2020-264. We would like to invite you to provide a best and final offer.

Please complete the Best and Final Offer and return via email to: alejandra.gonzalez@mcallenisd.net with a Cc to elizabeth.cabrera@mcallenisd.net, no later than 2:00 p.m. CST, Thursday, August 20, 2020.

Please note that Best and Final Offers shall be completed on this form. Should you have any questions regarding this request, please feel free to email at alejandra.gonzalez@mcallenisd.net with a Cc to elizabeth.cabrera@mcallenisd.net .

☐ The original quote submitted is the Best and Final Offer **(NOTE: If making this selection, Pricing Matrix must be completed)**
☑ The Best and Final Offer is as follows:

Pricing Matrix

	DESCRIPTION	QTY	UNIT PRICE	MONTHLY FEE	TOTAL	List any exceptions to the District's requested Services:
1	Fire Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for one (1) Year Contract (12 months)**	41	57.00	2,337.00	28,044.00	
2	Fire Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for two (2) Year Contract (24 months)**	41	48.95	2,006.95	48,166.80	
3	Fire Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for three (3) Year Contract (36 months)**	41	41.95	1,719.95	61,918.20	

	DESCRIPTION	QTY	UNIT PRICE	MONTHLY FEE	TOTAL	List any exceptions to the District's requested Services:
1	Intrusion Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for One (1) Year Contract (12 months)**	43	144.95	6,232.85	74,794.20	
2	Intrusion Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for Two (2) Year Contract (24 months)**	43	139.95	6,017.85	144,428.40	
3	Intrusion Alarm - 24/7/365 monitoring services, include all equipment for cellular and analog failover, battery back-up, maintenance, inspections, 4 hour response with 24 hour repair. **Price for three (3) Year Contract (36 months)**	43	134.95	5,802.85	208,902.60	

List any value add provided with solution (in addition, if applicable to any value add already submitted):

Pricing includes all new cellular alarm monitoring radios with installation.

****

Acknowledgement must be legible, preferably typed, and signed by an authorized official with legal binding authority.

ACKNOWLEDGEMENT BEST AND FINAL OFFER:

SIGNATURE _____ DATE: 8/18/2020

PRINTED NAME Alan Yoder TITLE: President

****

Alan Yoder

From: Cabrera, Elizabeth - Department Of Purchasing Services <Elizabeth.Cabrera@mcallenisd.net>
Sent: Thursday, September 03, 2020 4:34 PM
To: Cabrera, Elizabeth - Department Of Purchasing Services
Cc: Gonzalez, Alejandra - Department Of Purchasing Services
Subject: FW: Request for Proposal No. 2020-264 - Fire and Intrusion Alarm Monitoring Services - Price Clarification

Importance: High

Good Afternoon,
Please respond to the following price clarification as follows: Tomorrow, September 4, 2020 @ 9:30am.

Does your monthly cost include the equipment required to have a fully functional cellular service?

Yes ✓ No _____, if no, please explain: _____

Superior Alarms

Due date and time for response is as follows: Tomorrow, September 4, 2020 @ 9:30am.

Note: Due to COVID-19, our offices are currently closed; however, we continue to work remotely.

Thank you,

Elizabeth Cabrera
Purchasing Coordinator
McAllen Independent School District
elizabeth.cabrera@mcallenisd.net
T: 956-657-4480
F: 956.657-4481

MCALLEN ISD NEW VENDOR REGISTRATION!

McAllen ISD Purchasing Services is pleased to announce that we will be transitioning to a NEW bidding portal. Current and new vendors interested in doing business with McAllen ISD must register in order to receive bid notifications. Interested vendors may register online by visiting: https://mcallenisd.ionwave.net/Login.aspx

The McAllen Independent School District prohibits discrimination, including harassment, against any employee/student on the basis of race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of District Policy and is prohibited.McAllen ISD is an equal opportunity provider. The following person has been designated to handle inquiries regarding this subject:
John L. Wilde, john.wilde@mcallenisd.net , Director for Student Support Services, Title IX Coordinator (Students and Employees) , 2200 Tamarack Ave. Portable 69 , McAllen, TX - 78501 (956) 618-6031

Exhibit “C” – Certificate of Insurance

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/15/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Shepard Insurance Agency 5801 N 10th St Ste 600 Mcallen TX 78504	**CONTACT NAME:** Yolanda Alonso **PHONE (A/C, No, Ext):** 956-686-3888 **FAX (A/C, No):** 956-682-5650 **E-MAIL ADDRESS:** yolandaa@shepins.com
INSURED SUPEALA-01 Alan Yoder Enterprises, Inc dba Superior Alarms P O Drawer 3097 McAllen TX 78502	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** State Automobile Mutual Ins Co — 25127 **INSURER B :** Everest Indemnity Insurance Co **INSURER C :** Texas Mutual Insurance Company — 22945 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 327176845 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC OTHER:			51GL015008-201	3/5/2020	3/5/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG Gen Aggr Cap	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $ 5,000,000
A	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			10013888CA	1/17/2020	1/17/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
B	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE DED X RETENTION $ 10,000			51CC005577-201	3/5/2020	3/5/2021	EACH OCCURRENCE AGGREGATE	$ 2,000,000 $ 2,000,000
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		0001134027	7/29/2020	7/29/2021	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Umbrella is excess over general liability and workers' compensation policies

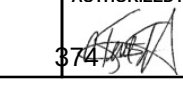
CERTIFICATE HOLDER

McAllen ISD
4309 Warrior Dr, Building C
McAllen TX 78501

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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ACORD 25 (2016/03) **The ACORD name and logo are registered marks of ACORD**

Exhibit "D" - "Superior Alarms Standard Fire Alarm Agreement with Rider for Security"

Subscriber: MISD Bid 2020-264

Account #: _____ **J #:** _____

SUPERIOR ALARMS
600 Ash Avenue
McAllen, TX 78501
(956) 682-6005

STANDARD FIRE ALARM AGREEMENT WITH RIDER FOR SECURITY SERVICES

Date: 10/9/2020

Subscriber's Name: McAllen Independent School District Telephone #.: 956-632-3200 Cell Phone #: _____

Address: 2000 N. 23rd St. McAllen, Tx 78501 Email: _____

SALE AND INSTALLATION

SUPERIOR ALARMS (hereinafter referred to as "SUPERIOR" or "ALARM COMPANY") agrees to sell, install, and instruct Subscriber in the proper use of the Fire Alarm Equipment or System, at Subscriber's premises, and Subscriber agrees to buy, such system in accordance with this agreement, consisting of the following equipment: **See attached Schedule of Equipment and Services for included equipment, sale and installation information.** Passcode to software remains the property of SUPERIOR. Software programmed by SUPERIOR is the intellectual property of SUPERIOR and any unauthorized use of same, including derivative works, is strictly prohibited and may violate Federal Copyright laws, Title 17 of the United States Code, and may subject violator to civil and criminal penalties. SUPERIOR's signs and decals remain the property of SUPERIOR and must be removed upon termination of this agreement.

Purchase Price: $ _____ Approximate date work to begin _____

Taxes: $_____ Estimated date work to be substantially completed _____

Total: $_____

Down Payment: $_____

Balance due upon completion of installation: $_____

☐ **Check if Communication System, consisting of software, radio, cellular or communication connective devices, remains the property of SUPERIOR.**
The agreed value of the Communication System is $1800.00.

☐ **Check if Fire Alarm System to Code:**
Initial here_____ if fire alarm system is to be installed pursuant to filed plans and specifications approved by Authority Having Jurisdiction [AHJ].

☐ **Check if system includes Area of Refuge two way communication system. If this service is included SUPERIOR will install, pursuant to filed and approved plans and specification with the Building Department, AHJ requirements for a two-way communication system which shall have a timed automatic telephone dial-out capability to a monitoring location or 911. The two-way communication system shall include both audible and visible signals unless otherwise directed by the AHJ. All references to the fire alarm system in this agreement shall include the Area of Refuge system.**

☐ **Check if system includes In-Building Wireless Communications Systems for Emergency Responders, Signal Boosters and Bi-Directional Amplifiers (BDA), which systems require testing and service. See Schedule of Equipment and Services to determine if this service includes wireless system design, surveys, radio equipment installation, testing, coordination and permits with AHJ. All references to the fire alarm system in this agreement shall include the In-Building Wireless Communications Systems for Emergency Responders.**

NOTICE: Unless a Fire Alarm System to Code is selected to be installed, SUPERIOR makes no representation that the fire alarm detection equipment meets local code, fire department or any Authority Having Jurisdiction [AHJ] requirements, and it is not SUPERIOR's responsibility to apply for any permits or fees in connection with such equipment. The law requires and SUPERIOR recommends that Subscriber install a Fire Alarm System to code with plans and specifications filed with AHJ, properly permitted, inspected and approved by AHJ. Subscriber represents that existing fire alarm system is approved by AHJ and that any repairs or replacement parts installed by SUPERIOR are not additional equipment which would require AHJ approval. SUPERIOR may in its sole discretion notify AHJ if SUPERIOR's services are to be terminated or have terminated or that the fire alarm system is not functioning and SUPERIOR is unable to provide monitoring or the fire alarm system is otherwise non-compliant with applicable fire codes.

CHECK BOX FOR APPROPRIATE SERVICES: Only services selected are included:
SERVICES AND RECURRING CHARGES: All charges are billed in advance and are plus tax, if applicable [select one option]:
Billing shall be: ☑ **Monthly** ☐ **Quarter-Annually** ☐ **Semi-Annually** ☐ **Annually**

☑ **1. MONITORING CHARGES:**
Subscriber agrees to pay SUPERIOR the sum of $_____, per month for the monitoring of the FIRE ALARM system for the term of this agreement

2. SERVICE CHARGES: (Select a or b)
☑ (a) Subscriber agrees to pay SUPERIOR on a per call basis. If this agreement provides for service on a per call basis, Subscriber agrees to pay SUPERIOR for all parts and labor at the time of service.
Subscriber to initial for per call service option:_____

☐ (b) Subscriber agrees to pay SUPERIOR the sum of $_____, per month, for the term of this agreement for labor and material to service the fire alarm system for damage caused by ordinary wear and tear. Batteries, electrical surges, lightning damage, software upgrades and repairs, communication devices no longer supported by communication pathways, obsolete components and components exceeding manufacturer's useful life are not included in service and will be repaired or replaced at Subscriber's expense payable at time of service.

☐ **3. INSPECTIONS: Systems to be inspected: ☐ Fire Alarm ☐ Area of Refuge ☐ In-Building Wireless Communication.**
Subscriber agrees to pay SUPERIOR the sum of $_____ per month for the term of this agreement, for inspection service. If this option is selected SUPERIOR will make ____ inspection(s) of the fire alarm system per year. Any additional inspections required by Authority Having Jurisdiction (AHJ) will be charged at SUPERIOR'S then prevailing rates which Subscriber agrees to pay. Unless otherwise noted in the Schedule of Equipment and Services inspection will be performed to meet the minimum requirements of the applicable code or AHJ. It is Subscriber's responsibility to reschedule or permit access for inspection. Testing at inspection ensures only that accessible components are in proper working order at time of inspection unless otherwise reported to Subscriber at time of inspection. Inspection does not include repair. If sprinkler alarm or other device monitoring water flow is inspected, the inspection does not include inspection or testing of sufficiency of water supply, for which SUPERIOR has no responsibility or liability.

☐ **4. MONITORING CENTER CERTIFICATE:**
Subscriber agrees to pay SUPERIOR the sum of $ _____, per month for the term of this agreement, for an Underwriters Laboratories Inc. (UL) Fire Alarm Certificate service. If this option is selected SUPERIOR will issue a UL Certificate for the fire alarm system. Subscriber acknowledges that UL is a separate AHJ that may want to inspect the fire alarm system. UL or the Local AHJ can require changes to the fire alarm system to keep the Certificate in force. Subscriber agrees to pay SUPERIOR for any inspections or required changes at SUPERIOR's then prevailing rates.

☐ **5. RUNNER SERVICE:**
Subscriber agrees to pay SUPERIOR the sum of $_____per month for the term of this agreement, for UL Runner Response Service for up to _____ Runs per year. If this option is selected SUPERIOR's Runner upon notification from Monitoring Center of any alarm, supervisory or trouble signals, to the best of SUPERIOR's ability will respond to Subscriber's location within 1 hour for alarm and supervisory signals and 4 hours for trouble signals. Subscriber agrees to issue SUPERIOR 2 sets of all keys necessary for SUPERIOR to enter into all locked areas of Subscriber's location. Subscriber agrees to pay SUPERIOR for any additional Runs at SUPERIOR's then prevailing labor rate. Subscriber acknowledges that Runner Service is for response only and does not cover any work or repairs once SUPERIOR is on site.

☐ **IN LIEU OF SEPARATE RECURRING CHARGES IN PARAGRAPHS 1-5 ABOVE, SUBSCRIBER SHALL PAY $_____ PER MONTH WHICH INCLUDES ALL THE CHECKED SERVICES IN PARAGRAPHS 1-5.**

6. MONITORING CENTER SERVICES PROVIDED: Upon receipt of a fire alarm signal from Subscriber's fire alarm system, SUPERIOR or its designee Monitoring Center shall make every reasonable effort to notify Subscriber and the appropriate municipal fire department and comply with AHJ dispatch procedures. Only Subscriber will be notified of fire trouble, fire supervisory or other off normal signals as soon as may be practical. Subscriber acknowledges that signals transmitted from Subscriber's premises directly to fire departments are not monitored by personnel of SUPERIOR or its Monitoring Center and SUPERIOR does not assume any responsibility for the manner in which such signals are monitored or the response, if any, to such signals. Subscriber acknowledges that signals which are transmitted over telephone lines, wire, air waves, internet, Managed Facilities Voice Networks, VOIP, or other modes of communication pass through communication networks wholly beyond the control of SUPERIOR and are not maintained by SUPERIOR except SUPERIOR may own the radio network and SUPERIOR shall not be responsible for any failure which prevents transmission signals or data from reaching the Monitoring Center or damages arising therefrom, or for data corruption, theft or viruses to Subscriber's computers if connected to the communication equipment. The fire alarm system and communication pathway may not function during a power failure or not maintain functionality for a 24 hour period as required by NFPA-72 for fire alarm systems and Subscriber is responsible for verifying operation of the communication pathway with the communications pathway provider. Subscriber agrees to furnish SUPERIOR with a written Call List of names and telephone numbers of persons Subscriber wishes to receive notification of fire alarm signals. Unless otherwise provided in the Call List SUPERIOR will make a reasonable effort to contact the first person reached or notified on the list either via telephone call, text or email message. No more than one call to the list shall be required and any form of notification provided for herein, including leaving a message on an answering machine, shall be deemed reasonable compliance with SUPERIOR's notification obligation. All changes and revisions to the account information shall be supplied to SUPERIOR in writing. Subscriber authorizes SUPERIOR to access the control panel and/or communicator to input or delete data and programming. If Subscriber requests SUPERIOR to reprogram system functions remotely, Subscriber shall pay SUPERIOR SUPERIOR'S then prevailing rates for each such service, and any change in programming requires a full physical test of all fire alarm components pursuant to NFPA 72 and AHJ requirements which testing shall be at Subscriber's expense at SUPERIOR's customary charges. SUPERIOR may, without prior notice, suspend or terminate its services in event of Subscriber's default in performance of this agreement or in event Monitoring Center's facility or communication network is nonoperational or Subscriber's system is sending excessive false alarms. Monitoring Center is authorized to record and maintain all data, voice and alarm communications and shall be the exclusive owner of such property. If AHJ requires a technician to be sent to Subscriber's premises after a fire alarm is dispatched, or if Runner service exceeds maximum Runs per year, Subscriber agrees to pay SUPERIOR SUPERIOR'S then prevailing rates per call.

7. TERM OF AGREEMENT / RENEWALS: The term of this agreement shall be for a period of five years. This agreement shall renew for like terms thereafter under the same terms and conditions, unless either party gives written notice to the other by certified mail, return receipt requested, of their intention not to renew the agreement at least 30 days prior to the expiration of any term. Termination shall comply with local law. Unless otherwise specified herein, all recurring charges for 1-5 services shall commence on the first day of the month next succeeding the date hereof, all payments being due on the first day of the month.

8. INCREASES OF MONTHLY CHARGE: After the expiration of one year from the date hereof SUPERIOR shall be permitted from time to time to increase the monthly charges by an amount not to exceed nine percent each year and Subscriber agrees to pay such increase as invoiced.

9. ALARM EQUIPMENT REMAINS PERSONAL PROPERTY: All equipment and material installed by SUPERIOR shall remain Subscriber's personal property and shall not be considered or deemed a fixture, or an addition to, alteration, conversion, improvement, modernization, remodeling, repair or replacement of any part of the realty, and Subscriber shall not permit the attachment thereto of any apparatus not furnished by SUPERIOR. Pursuant to Chapter 6002 of the Texas Insurance Code, SUPERIOR will provide Subscriber with all passwords provided Subscriber signs SUPERIOR's liability waiver.

10. EQUIPMENT LIMITED WARRANTY: In the event that any part of the equipment becomes defective, SUPERIOR agrees to make all repairs and replacement of parts without costs to the Subscriber for a period of one (1) year from the date of installation. SUPERIOR reserves the option to either replace or repair the equipment, and reserves the right to substitute materials of equal quality at time of replacement, or to use reconditioned parts in fulfillment of this warranty. SUPERIOR's warranty does not include damage caused by electric, plumbing or construction, nor damage by lightning, electrical surge, or misuse. SUPERIOR is not the manufacturer of the equipment and other than SUPERIOR's limited warranty Subscriber agrees to look exclusively to the manufacturer of the equipment for repairs under its warranty coverage if any**. Except as set forth in this agreement, SUPERIOR makes no express warranties as to any matter whatsoever, including but not limited to, unless prohibited by law, the condition of the equipment, its merchantability, or its fitness for any particular purpose, and SUPERIOR shall not be liable for consequential damages. SUPERIOR does not represent nor warrant that the equipment may not be compromised or circumvented, or that the system will prevent any loss by fire, smoke or water or otherwise; or that the system will in all cases provide the protection for which it is installed. SUPERIOR expressly disclaims any implied warranties, including implied warranties of merchantability or fitness for a particular purpose**. The warranty does not cover any damage to material or equipment caused by accident, misuse, attempted or unauthorized repair service, modification, or improper installation by anyone other than SUPERIOR. SUPERIOR shall not be liable for consequential damages. Subscriber acknowledges that any affirmation of fact or promise made by SUPERIOR shall not be deemed to create an express warranty unless included in this agreement in writing; that Subscriber is not relying on SUPERIOR's skill or judgment in selecting or furnishing a system suitable for any particular purpose and that there are no warranties which extend beyond those on the face of this agreement, and that SUPERIOR has offered additional and more sophisticated equipment for an additional charge which Subscriber has declined. Subscriber's exclusive remedy for SUPERIOR's breach of this agreement or negligence to any degree under this agreement is to require SUPERIOR to repair or replace, at SUPERIOR's option, any equipment which is non-operational. Some states do not allow the exclusion or limitation of

consequential or incidental damages, or a limitation on the duration of implied warranties, so the above limitations or exclusions may not apply to you. The warranty gives you specific legal rights and you may also have other rights which may vary from state to state. Fire Alarms are required to be approved by AHJ and may require plans and specifications designed, signed and submitted by a licensed architect or professional engineer, which must be engaged by Subscriber. If SUPERIOR is installing a Fire Alarm System to code installation must be approved by the AHJ. This Limited Warranty is independent of and in addition to repair service contracted under paragraph 2b of this agreement.

11. DELAY IN DELIVERY / INSTALLATION / RISK OF LOSS OF MATERIAL: SUPERIOR is authorized to make preparations such as drilling holes, driving nails, making attachments or doing any other thing necessary in SUPERIOR's sole discretion for the installation and service of the equipment, and SUPERIOR shall not be responsible for any condition created thereby as a result of such installation, service, or removal of the equipment, and Subscriber represents that the owner of the premises, if other than Subscriber, authorizes the installation of the equipment under the terms of this agreement. SUPERIOR shall not be liable for any damage or loss sustained by Subscriber as a result of delay in delivery and/or installation of equipment, equipment failure, or for interruption of service due to electrical failure, strikes, walk-outs, war, acts of God, or other causes, including SUPERIOR's negligence or failure to perform any obligation. The estimated date work is to be substantially completed is not a definite completion date and time is not of the essence. In the event the work is delayed through no fault of SUPERIOR, SUPERIOR shall have such additional time for performance as may be reasonably necessary under the circumstances. Subscriber agrees to pay SUPERIOR the sum of $1,000 per day for each business day the work is re-scheduled or delayed by Subscriber or others engaged by Subscriber through no fault of SUPERIOR on less than 24 hour notice to SUPERIOR. If installation is delayed for more than one year from date hereof through no fault of SUPERIOR, Subscriber agrees to pay an additional 5% of the contract Purchase Price upon installation. Subscriber assumes all risk of loss of material once delivered to the job site.

12. REPAIR SERVICE: The parties agree that the equipment, once installed, is in the exclusive possession and control of the Subscriber, and it is Subscriber's sole responsibility to notify SUPERIOR if any equipment is in need of repair. SUPERIOR shall not be required to service the equipment unless it has received notice from Subscriber, and upon such notice, SUPERIOR shall, during the warranty period or if service has been contracted under paragraph 2b of this agreement, service the equipment to the best of its ability, exclusive of Saturday, Sunday and legal holidays, during the business hours of 9 a.m. and 5 p.m. Repair service pursuant to paragraph 2b includes all parts and labor. All repairs, replacement or alteration of the security system made by reason of alteration to Subscriber's premises, or caused by unauthorized intrusion, water, insects, vermin, lightning or electrical surge, or caused by any means other than normal usage, wear and tear, shall be made at the cost of the Subscriber. Batteries, electrical surges, lightning damage, software upgrades and repairs, communication devices no longer supported by communication pathways, obsolete components and components exceeding manufacturer's useful life are not included in service and will be repaired or replaced at Subscriber's expense payable at time of service. No apparatus or device shall be attached to or connect with the security system as originally installed without SUPERIOR's written consent.

13. SUBSCRIBER'S DUTY TO SUPPLY ELECTRIC AND TELEPHONE SERVICE: Subscriber agrees to furnish, at Subscriber's expense, all 110 Volt AC power, electrical outlet, circuit breaker and dedicated electrical feed, internet connection, high speed broadband cable or DSL and IP Address, telephone hook-ups, RJ31x Block or equivalent, as deemed necessary by SUPERIOR.

14. SUBSCRIBER RESPONSIBLE FOR FALSE ALARMS / PERMIT FEES / NON-SOLICITATION / ADDITIONAL COSTS / OTHER LICENSED TRADES / CO AND ECB VIOLATIONS / AND EXPERT WITNESS FEES: Subscriber is responsible for all alarm permits and permit fees, agrees to file for and maintain any permits required by applicable law and AHJ and indemnify or reimburse SUPERIOR for any fees or fines relating to permits, code compliance or false alarms. SUPERIOR shall have no liability for permit fees, false alarms, false alarm fines, fire response, any damage to personal or real property or personal injury caused by fire department response to alarm, whether false alarm or otherwise, or the refusal of the fire department to respond. In the event of termination of fire response by the fire department this agreement shall nevertheless remain in full force and Subscriber shall remain liable for all payments provided for herein. Should SUPERIOR be required by existing or hereafter enacted law to perform any service or furnish any material not specifically covered by the terms of this agreement Subscriber agrees to pay SUPERIOR for such service or material. Subscriber agrees that it will not solicit for employment for itself, or any other entity, or employ, in any capacity any employee of SUPERIOR assigned by SUPERIOR to perform any service for or on behalf of Subscriber for a period of two years after SUPERIOR has completed providing service to Subscriber. In the event of Subscriber's violation of this provision, in addition to injunctive relief, SUPERIOR shall recover from Subscriber an amount equal to such employee's salary based upon the average three months preceding employee's termination of employment with SUPERIOR, times twelve, together with SUPERIOR's counsel and expert witness fees. Subscriber is responsible for engaging licensed trades to perform any work which SUPERIOR is not licensed to perform interconnecting the fire alarm to HVAC, elevators, appliances and other electronic and mechanical systems. It is Subscriber's responsibility to obtain a Certificate of Occupancy for the intended use of the premises affected by the fire alarm or obtain a Letter of No Objection from the AHJ if a Certificate of Occupancy is not available. It is Subscriber's sole responsibility to cure any building or Environmental Control Board violations. In the event Subscriber or any third party subpoenas or summons SUPERIOR requiring any services or appearances, Subscriber agrees to pay SUPERIOR SUPERIOR'S then prevailing rates for such services and appearances. Subscriber shall reimburse SUPERIOR for any Monitoring Center charges for excessive signals.

15. INDEMNITY / WAIVER OF SUBROGATION RIGHTS / ASSIGNMENTS: SUBSCRIBER AGREES TO AND SHALL DEFEND, ADVANCE EXPENSES FOR LITIGATION AND ARBITRATION, INCLUDING INVESTIGATION, LEGAL AND EXPERT WITNESS FEES, INDEMNIFY AND HOLD HARMLESS SUPERIOR, ITS EMPLOYEES, AGENTS AND SUBCONTRACTORS, FROM AND AGAINST ALL CLAIMS, LAWSUITS, INCLUDING THOSE BROUGHT BY THIRD PARTIES OR SUBSCRIBER, INCLUDING REASONABLE ATTORNEY'S FEES AND LOSSES ASSERTED AGAINST AND ALLEGED TO BE CAUSED BY SUPERIOR'S PERFORMANCE, NEGLIGENT PERFORMANCE, OR FAILURE TO PERFORM ANY OBLIGATION UNDER OR IN FURTHERANCE OF THIS AGREEMENT. Parties agree that there are no third-party beneficiaries of this agreement. Subscriber on its behalf and any insurance carrier waives any right of subrogation Subscriber's insurance carrier may otherwise have against SUPERIOR or SUPERIOR's subcontractors arising out of this agreement or the relation of the parties hereto. Subscriber shall not be permitted to assign this agreement without written consent of SUPERIOR, which shall not unreasonably be withheld. SUPERIOR shall have the right to assign this agreement to a company licensed to perform the services and shall be relieved of any obligations created herein upon such assignment.

16. EXCULPATORY CLAUSE: SUPERIOR AND SUBSCRIBER AGREE THAT SUPERIOR IS NOT AN INSURER AND NO INSURANCE COVERAGE IS OFFERED HEREIN. THE FIRE ALARM AND SUPERIOR'S SERVICES ARE DESIGNED TO DETECT AND REDUCE CERTAIN RISKS OF LOSS, THOUGH SUPERIOR DOES NOT GUARANTEE THAT NO LOSS OF DAMAGE WILL OCCUR. SUPERIOR is not assuming liability, and, therefore, shall not be liable to Subscriber or any other third party for any loss, economic or non-economic, in contract or tort, data corruption or inability to retrieve data, personal injury or property damage sustained by Subscriber as a result of equipment failure, human error, fire, smoke, water or any other cause whatsoever, regardless of whether or not such loss or damage was caused by or contributed to by SUPERIOR's breach of contract, negligent performance to any degree in furtherance of this agreement, any extra contractual or legal duty, strict products liability, or negligent failure to perform any obligation pursuant to this agreement or any other legal duty. **Subscriber releases SUPERIOR from any claims for contribution, indemnity or subrogation.**

17. INSURANCE / ALLOCATION OF RISK: Subscriber shall maintain a policy of Comprehensive General Liability and Property Insurance for liability, casualty, fire, theft, and property damage under which Subscriber is named as insured and SUPERIOR is named as additional insured and which shall cover any loss or damage SUPERIOR's services are intended to detect to one hundred percent of the insurable value or potential risk. The parties intend that the Subscriber assume all potential risk and damage that may arise by reason of failure of the equipment, system or SUPERIOR's services and that Subscriber will look to its own insurance carrier for any loss or assume the risk of loss. SUPERIOR shall not be responsible for any portion of any loss or damage which is recovered or recoverable by Subscriber from insurance covering such loss or damage or for such loss or damage against which Subscriber is indemnified or insured. Subscriber and all those claiming rights under Subscriber waive all rights against SUPERIOR and its subcontractors for loss or damages caused by perils intended to be detected by SUPERIOR's services or covered by insurance to be obtained by Subscriber, except such rights as Subscriber or others may have to the proceeds of insurance.

18. LIMITATION OF LIABILITY: SUBSCRIBER AGREES THAT SHOULD THERE ARISE ANY LIABILITY ON THE PART OF SUPERIOR AS A RESULT OF SUPERIOR'S BREACH OF CONTRACT, NEGLIGENT PERFORMANCE TO ANY DEGREE OR NEGLIGENT FAILURE TO PERFORM ANY OF SUPERIOR'S OBLIGATIONS PURSUANT TO THIS AGREEMENT OR ANY OTHER LEGAL DUTY, EQUIPMENT FAILURE, HUMAN ERROR, OR STRICT PRODUCTS LIABILITY, WHETHER ECONOMIC OR NON-ECONOMIC, IN CONTRACT OR IN TORT, THAT SUPERIOR'S LIABILITY SHALL BE LIMITED TO THE SUM OF $1,000.00 OR 6 TIMES THE MONTHLY PAYMENT FOR SERVICES BEING PROVIDED AT TIME OF LOSS, WHICHEVER IS GREATER. IF SUBSCRIBER WISHES TO INCREASE SUPERIOR'S AMOUNT OF LIMITATION OF LIABILITY, SUBSCRIBER MAY, AS A MATTER OF RIGHT, AT ANY TIME, BY ENTERING INTO A SUPPLEMENTAL AGREEMENT, OBTAIN A HIGHER LIMIT BY PAYING AN ANNUAL PAYMENT CONSONANT WITH SUPERIOR'S INCREASED LIABILITY. THIS SHALL NOT BE CONSTRUED AS INSURANCE COVERAGE.

SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS EXCULPATORY CLAUSE, INDEMNITY, INSURANCE, ALLOCATION OF RISK AND LIMITATION OF LIABILITY PROVISIONS.

Subscriber to initial _____

19. LEGAL ACTION / ARBITRATION / SECURITY INTEREST / BREACH / LIQUIDATED DAMAGES / AGREEMENT TO BINDING ARBITRATION: THE PARTIES AGREE THAT DUE TO THE NATURE OF THE SERVICES TO BE PROVIDED BY SUPERIOR, THE PAYMENTS TO BE MADE BY THE SUBSCRIBER FOR THE TERM OF THIS AGREEMENT FORM AN INTEGRAL PART OF SUPERIOR'S ANTICIPATED PROFITS; THAT IN THE EVENT OF SUBSCRIBER'S DEFAULT IT WOULD BE DIFFICULT IF NOT IMPOSSIBLE TO FIX SUPERIOR'S ACTUAL DAMAGES. THEREFORE, IN THE EVENT SUBSCRIBER DEFAULTS IN ANY PAYMENT OR CHARGES TO BE PAID TO SUPERIOR, SUBSCRIBER SHALL BE IMMEDIATELY LIABLE FOR ANY UNPAID INSTALLATION AND INVOICED CHARGES PLUS 80% OF THE BALANCE OF ALL PAYMENTS FOR THE ENTIRE TERM OF THIS AGREEMENT AS LIQUIDATED DAMAGES.

SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS A LIQUIDATED DAMAGE CLAUSE.

Subscriber to initial _____

ADDITIONALLY, IN THE EVENT SUPERIOR RETAINED OWNERSHIP OF THE COMMUNICATION SYSTEM AND SUBSCRIBER BREACHES THIS AGREEMENT SUPERIOR MAY, AT ITS OPTION, EITHER REMOVE ITS COMMUNICATION SYSTEM OR DEEM SAME SOLD TO SUBSCRIBER FOR 80% THE AMOUNT SPECIFIED AS THE AGREED VALUE OF THE COMMUNICATION SYSTEM. SUPERIOR MAY, WITHOUT PRIOR NOTICE, SUSPEND OR TERMINATE ITS SERVICES IN EVENT OF SUBSCRIBER'S DEFAULT IN PERFORMANCE OF THIS AGREEMENT AND SHALL BE PERMITTED TO TERMINATE ALL OF ITS SERVICES UNDER THIS AGREEMENT AND DEACTIVATE THE SYSTEM WITHOUT RELIEVING SUBSCRIBER OF ANY OBLIGATION HEREIN AND MAY NOTIFY AHJ OF TERMINATION. All actions or proceedings by either party must be based on the provisions of this agreement. Any other action that Subscriber may have or bring against SUPERIOR in respect to services rendered in connection with this agreement shall be deemed to have merged in and be restricted to the terms and conditions of this agreement. In order to secure all indebtedness or liability of Subscriber to SUPERIOR, Subscriber hereby grants SUPERIOR a security interest in all of Subscriber's equipment, inventory and proceeds thereof, accounts receivables and cash on hand and SUPERIOR may execute and file UCC-1 statement. **If SUPERIOR prevails in any litigation or arbitration between the parties, Subscriber shall pay SUPERIOR's legal fees. In any action commenced by SUPERIOR against Subscriber, Subscriber shall not be permitted to interpose any counterclaim. SUBSCRIBER AGREES THAT SUBSCRIBER MAY BRING CLAIMS AGAINST SUPERIOR ONLY IN SUBSCRIBER'S INDIVIDUAL CAPACITY, AND NOT AS A CLASS ACTION PLAINTIFF OR CLASS ACTION MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. ANY DISPUTE BETWEEN THE PARTIES OR ARISING OUT OF THIS AGREEMENT, INCLUDING ISSUES OF ARBITRABILITY, SHALL, AT THE OPTION OF ANY PARTY, BE DETERMINED BY BINDING AND FINAL ARBITRATION BEFORE A SINGLE ARBITRATOR ADMINISTERED BY ARBITRATION SERVICES INC., ITS SUCCESSORS OR ASSIGNS, PURSUANT TO ITS ARBITRATION RULES AT WWW.ARBITRATIONSERVICESINC.COM AND THE FEDERAL ARBITRATION ACT, EXCEPT THAT NO PUNITIVE OR CONSEQUENTIAL DAMAGES MAY BE AWARDED. The arbitrator shall be bound by the terms of this agreement and is authorized to conduct proceedings by telephone, video, submission of papers or in-person hearing. By agreeing to this arbitration provision Subscriber is waiving Subscriber's right to a trial before a judge or jury, waiving Subscriber's right to appeal the arbitration award and waiving Subscriber's right to participate in a class action. Service of process or papers in any legal proceeding or arbitration between the parties may be made by First-Class Mail delivered by the U.S. Postal Service addressed to the party's address in this agreement or another address provided by the party in writing to the party making service. The parties submit to the jurisdiction and laws of Texas except for arbitration which is governed by the FAA and agree that any litigation or arbitration between the parties may be commenced and maintained in the county where SUPERIOR's principal place of business is located or Nassau County, New York. The parties waive trial by jury in any action between them unless prohibited by law. Any action by Subscriber against SUPERIOR must be commenced within one year of the accrual of the cause of action or shall be barred. All actions or proceedings by either party must be based on the provisions of this agreement. Any other action that Subscriber may have or bring against SUPERIOR in respect to other services rendered in connection with this agreement shall be deemed to have merged in and be restricted to the terms and conditions of this agreement.**

SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE DISPUTES AND THAT ARBITRATION IS BINDING AND FINAL AND THAT SUBSCRIBER IS WAIVING SUBSCRIBER'S RIGHT TO TRIAL IN A COURT OF LAW AND OTHER RIGHTS.

Subscriber to Initial: _____

20. SUPERIOR'S RIGHT TO SUBCONTRACT SPECIAL SERVICES: Subscriber agrees that SUPERIOR is authorized and permitted to subcontract any services to be provided by SUPERIOR to third parties who may be independent of SUPERIOR, and that SUPERIOR shall not be liable for any loss or damage sustained by Subscriber by reason of fire or any other cause whatsoever caused by the negligence of third parties and that Subscriber appoints SUPERIOR to act as Subscriber's agent with respect to such third parties, except that SUPERIOR shall not obligate Subscriber to make any payments to such third parties. Subscriber acknowledges that this agreement, and particularly those paragraphs relating to SUPERIOR's disclaimer of warranties, exemption from liability, even for its negligence, limitation of liability and indemnification, inure to the benefit of and are applicable to any assignees, subcontractors, manufacturers, vendors and Monitoring Center of SUPERIOR.

21. MONITORING CENTER SERVICES: Upon receipt of an alarm signal, video or audio transmission, from Subscriber's security system, SUPERIOR or its designee Monitoring Center shall make every reasonable effort to notify Subscriber and the appropriate municipal police or fire department [First Responders] depending upon the type of signal received. Not all signals or transmissions will require notification to the authorities and Subscriber may obtain a written response policy from SUPERIOR. No response shall be required for supervisory, loss of communication pathway, trouble or low battery signals. Subscriber acknowledges that signals transmitted from Subscriber's premises directly to municipal police or fire departments are not monitored by personnel of SUPERIOR or SUPERIOR's designee Monitoring Center and SUPERIOR does not assume any responsibility for the manner in which such signals are monitored or the response, if any, to such signals. Subscriber acknowledges that signals and transmissions are transmitted over telephone lines, wire, air waves, internet, VOIP, radio or cellular, or other modes of communication, and pass through communication networks wholly beyond the control of SUPERIOR and are not maintained by SUPERIOR except SUPERIOR may own the radio network, and SUPERIOR shall not be responsible for any failure which prevents transmission signals from reaching the Monitoring Center or damages arising therefrom, or for data corruption, theft or viruses to Subscriber's computers if connected to the alarm communication equipment. Subscriber agrees to furnish SUPERIOR with a written Call List of names and telephone numbers of those persons Subscriber wishes to receive notification of alarm signals. Unless otherwise provided in the Call List, SUPERIOR will make a reasonable effort to contact the first person reached or notified on the list either via telephone call, text or email message. No more than one call to the list shall be required and any form of notification provided for herein, including leaving a message on an answering machine, shall be deemed reasonable compliance with SUPERIOR's notification obligation. All changes and revisions shall be supplied to SUPERIOR in writing. Subscriber authorizes SUPERIOR to access the control panel to input or delete data and programming. If the equipment contains video or listening devices permitting Monitoring Center to monitor video or sound then upon receipt of an alarm signal, Monitoring Center shall monitor video or sound for so long as Monitoring Center, in its sole discretion, deems appropriate to confirm an alarm or emergency condition. If Subscriber requests SUPERIOR to remotely activate or deactivate the system, change combinations, openings or closings, or re-program system functions,

Subscriber shall pay SUPERIOR SUPERIOR'S then prevailing rates for each such service. SUPERIOR may, without prior notice, suspend or terminate its services, in SUPERIOR's sole discretion, in event of Subscriber's default in performance of this agreement or in event Monitoring Center facility or communication network is nonoperational or Subscriber's alarm system is sending excessive false alarms or runaway signals. Monitoring Center is authorized to record and maintain audio and video transmissions, data and communications, and shall be the exclusive owner of such property. All Subscriber information and data shall be maintained confidentially by SUPERIOR.

22. SUBSCRIBER REMOTE ACCESS: If Remote Access is included in the Schedule of Equipment and Services to be installed and services provided by SUPERIOR, the equipment will transmit data via Subscriber's high speed Internet, cellular or radio communication service from remote device supplied by SUPERIOR or Subscriber's Internet or wireless connection device which is compatible with SUPERIOR's remote services. SUPERIOR will grant access to server permitting Subscriber to monitor the security system, access the system to arm, disarm and bypass zones on the system, view the remote video camera(s) and control other remote automation devices that may be installed or, when system design permits, connect the system to the Internet, over which SUPERIOR has no control. The remote services server is provided either by SUPERIOR or a third party. SUPERIOR shall install the camera(s) in a permissible legal location in Subscriber's premises to permit Subscriber viewing. SUPERIOR shall have no responsibility for failure of data transmission, corruption or unauthorized access by hacking or otherwise and shall not monitor or view the camera data. Electronic data may not be encrypted and wireless components of the alarm system may not meet Advanced Encryption Standard specifications for encryption of electronic data established by the US National Institute of Standards and Technology or any other established criteria for encryption and SUPERIOR shall have no liability for access to the alarm system by others.

23. WIRELESS AND INTERNET ACCESS CAPABILITIES: Subscriber is responsible for supplying high-speed Internet access and/or wireless services at Subscriber's premises. SUPERIOR does not provide Internet service, maintain Internet connection, wireless access or communication pathways, computer, smart phone, electrical current connection or supply, or in all cases the remote video server. In consideration of Subscriber making its monthly payments for remote access to the system, SUPERIOR will authorize Subscriber access. SUPERIOR is not responsible for Subscriber's access to the Internet or any interruption of service or down time of remote access caused by loss of Internet service, radio or cellular or any other mode of communication used by Subscriber to access the system. Subscriber acknowledges that Subscriber's security system can be compromised if the codes or devices used for access are lost or accessed by others and SUPERIOR shall have no liability for such third party unauthorized access. SUPERIOR is not responsible for the security or privacy of any wireless network system or router. Wireless systems can be accessed by others, and it is the Subscriber's responsibility to secure access to the system with pass codes and lock out codes. SUPERIOR is not responsible for access to wireless networks or devices that may not be supported by communication carriers and upgrades to Subscriber's system will be at Subscriber's expense. If Subscriber is Self-Monitoring, no signals will be received unless Subscriber has access to the selected mode of communication pathway such as cellular, radio or Internet service.

24. ACCESS CONTROL SYSTEM OPERATION AND LIMITATIONS / ACCESS CONTROL ADMINISTRATION: If Access Control is selected as a service to be provided and included in the Schedule of Equipment and Services, Access Control equipment shall be connected to a computer supplied by the Subscriber and connected to Subscriber's computer network. If data storage or backup is a selected service SUPERIOR or its designee shall store and/or backup data received from Subscriber's system for a period of one year. SUPERIOR shall have no liability for data corruption or inability to retrieve data even if caused by SUPERIOR's negligence. Subscriber's data shall be maintained confidential and shall be retrieved and released only to Subscriber or upon Subscriber's authorization or by legal process. Internet access is not provided by SUPERIOR and SUPERIOR has no responsibility for such access or IP address service. SUPERIOR shall have no liability for unauthorized access to the system through the Internet or other communication networks or data corruption or loss for any reason whatsoever. If Access Control Administration is selected as a service to be provided SUPERIOR will maintain the data base for the operation of the Access Control System. Subscriber will advise SUPERIOR of all change in personnel and or changes in access levels of authorization and restrictions, providing access card serial numbers or biometric data and such information that Subscriber deems necessary to identify personnel. All communication by Subscriber to SUPERIOR regarding personnel access must be in writing via email or fax to addresses designated by SUPERIOR. SUPERIOR shall have remote Internet access to the Subscriber's designated access control computer to program and make data base updates to the system. Subscriber is responsible for maintaining its computer and computer network and Internet access.

25. AUDIO / VIDEO SYSTEM OPERATION AND LIMITATIONS: If Audio / Video System is selected as a service to be provided and included in the Schedule of Equipment and Services, and if video equipment is attached to a recorder, it shall not be used for any other purpose. SUPERIOR shall be permitted to access and make changes to the system's operation on site and over the internet. If data storage is selected service, SUPERIOR shall store data received from Subscriber's system for one year. SUPERIOR shall have no liability for data corruption or inability to retrieve data even if caused by SUPERIOR's negligence. Subscriber's data shall be maintained confidential and shall be retrieved and released only to Subscriber or upon Subscriber's authorization or by legal process. Telephone or internet access is not provided by SUPERIOR and SUPERIOR has no responsibility for such access or IP address service. If system has remote access SUPERIOR is not responsible for the security or privacy of any wireless network system or router, and it is the Subscriber's responsibility to secure access to the system with pass codes and lock outs. SUPERIOR shall have no liability for unauthorized access to the system through the internet or other communication networks or data corruption or loss for any reason whatsoever. If audio or video devices are installed, Subscriber has been advised to independently ascertain that the audio or video devices are used lawfully. SUPERIOR has made no representations and has provided no advice regarding the use of audio or video devices and it is Subscriber's sole responsibility to use the camera and audio devices lawfully.

26. INTENTIONALLY LEFT BLANK

27. MOLD, OBSTACLES AND HAZARDOUS CONDITIONS / FIRE STOP BREACH: Subscriber shall notify SUPERIOR in writing of any undisclosed, concealed or hidden conditions in any area where installation is planned, and Subscriber shall be responsible for removal of such conditions. In the event SUPERIOR discovers the presence of suspected asbestos or other hazardous material, SUPERIOR shall stop all work immediately and notify Subscriber. It shall be Subscriber's sole obligation to remove such conditions from the premises, and if the work is delayed due to the discovery of suspected asbestos or other hazardous material or conditions then an extension of time to perform the work shall be allowed and Subscriber agrees to compensate SUPERIOR for any additional expenses caused by the delay but not less than $1000.00 per day until work can resume. If SUPERIOR, in its sole discretion, determines that continuing the work poses a risk to SUPERIOR or its employees or agents, SUPERIOR may elect to terminate this agreement on 3 day notice to Subscriber and Subscriber shall compensate SUPERIOR for all services rendered and material provided to date of termination. SUPERIOR shall be entitled to remove all its equipment and uninstalled equipment and material from the job site. Under no circumstances shall SUPERIOR be liable to Subscriber for any damage caused by mold or hazardous conditions or remediation thereof. SUPERIOR shall have no liability for any breach of fire stops or for inspection or certification of integrity of fire stops in the premises.

28. NON-SOLICITATION: Subscriber agrees that it will not solicit for employment for itself, or any other entity, or employ, in any capacity, any employee of SUPERIOR assigned by SUPERIOR to perform any service for or on behalf of Subscriber for a period of two years after SUPERIOR has completed providing service to Subscriber. In the event of Subscriber's violation of this provision, in addition to injunctive relief, SUPERIOR shall recover from Subscriber an amount equal to such employee's salary based on the average three months preceding employee's termination of employment with SUPERIOR, times twelve, together with SUPERIOR's counsel and expert witness fees.

29. FALSE ALARMS / PERMIT FEES / WITNESS FEES: Subscriber is responsible for all alarm permits and fees, agrees to file for and maintain any permits required by applicable law and indemnify or reimburse SUPERIOR for any fees or fines relating to permits or false alarms. SUPERIOR shall have no liability for permit fees, false alarms, false alarm fines, the manner in which police or fire department responds, or the refusal of the police or fire department to respond. In the event of termination of police or fire department response this agreement shall nevertheless remain in full force and Subscriber shall remain liable for all payments provided for herein. In the event Subscriber or any third party subpoenas or summons SUPERIOR requiring any services or appearances, Subscriber agrees to pay SUPERIOR SUPERIOR'S then prevailing rates for such services and appearances. Subscriber shall reimburse SUPERIOR for any Monitoring Center charges for excessive, run-a-way or false alarm signals.

30. SECURITY INTEREST / COLLATERAL: To secure Subscriber's obligations under this agreement Subscriber grants SUPERIOR a security interest in the security equipment installed by SUPERIOR and SUPERIOR is authorized to file a financing statement.

31. CREDIT INVESTIGATION: Subscriber and any guarantor authorize SUPERIOR to conduct credit investigations from time to time to determine Subscriber's and guarantor's credit worthiness.

32. FULL AGREEMENT / SEVERABILITY: This agreement along with the Riders and Schedules of Equipment and Services constitute the full understanding of the parties and may not be amended, modified or canceled, except in writing signed by both parties. Subscriber acknowledges and represents that Subscriber has not relied on any representation, assertion, guarantee, warranty, collateral agreement or other assurance, except those set forth in this Agreement. Subscriber hereby waives all rights and remedies, at law or in equity, arising, or which may arise, as the result of Subscriber's reliance on such representation, assertion, guarantee, warranty, collateral agreement or other assurance. To the extent this agreement is inconsistent with any other document or agreement, whether executed prior to, concurrently with or subsequent to this agreement the terms of this agreement shall govern. This agreement shall run concurrently with and shall not terminate or supersede any existing agreement between the parties unless specified herein. Should any provision of this agreement be deemed void, the remaining parts shall be enforceable.

SUBSCRIBER ACKNOWLEDGES RECEIVING A FULLY EXECUTED COPY OF THIS AGREEMENT AND ANY RIDERS AND SCHEDULES OF EQUIPMENT AND SERVICES AT TIME OF EXECUTION. READ THEM BEFORE YOU SIGN THIS AGREEMENT.

SUPERIOR ALARMS:

By: Alan Yoder
Signature

Dated: 10/9/2020

SUBSCRIBER:

Subscriber: Signature by Authorized Officer — Print Name

Tax ID or EIN — Address

The undersigned personally guarantees Subscriber's performance of this agreement and agrees to be bound by all terms as a party herein.

Signature (Name must be printed below) — Social Security Number — Residence Address

SUPERIOR is Licensed and Regulated by the Texas Department of Public Safety, Private Security Bureau. Complaints may be directed to PO Box 4087 Austin, Texas 78773-001, 512-424-7293 or private_security_bureau@dps.texas.gov, License No: B04881. Regulated by Texas Fire Marshal's Office, Complaints Directed to: PO Box 149221 Austin, Texas 78714, 512-305-7900, http://www.tdi.state.tx.us/fire, License No: ACR-1750547. `Fire All in One Agreement with Rider for Security Services` Kenneth Kirshenbaum, Esq., Tel (516) 747-6700 KIRSCHENBAUM CONTACTS ©Copyright 2-18-19

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (Oct 9, 2020 10:10 CDT)
Stephen Crain

600 Ash Avenue- P.O. Drawer 3097
McAllen, TX 78501
State Lic. B4881 - Fire Lic. ACR-86318-816
Tel. (956) 682-6005 - Fax 213-1147

We send the police there in a hurry!

October 7, 2020

Addendum to **STANDARD FIRE ALARM AGREEMENT WITH RIDER FOR SECURITY** between McAllen Independent School District and Superior Alarms whether already existing or a new agreement after the date of this addendum.

ADD the following: **"ANY INDEMNITY OF SUBSCRIBER HEREIN IS LIMITED TO THE EXTENT SUBSCRIBER IS ALLOWED BY LAW TO INDEMNIFY OR GRANT AN INDEMNITY."**

Section 7. TERM OF AGREEMENT / RENEWAL, Change sentence "The term of this agreement shall be for a period of five years" **to read as follows**: The term of this agreement shall be for a period of two years.

19. LEGAL ACTION / ARBITRATION / SECURITY INTEREST / BREACH / LIQUIDATED DAMAGES / AGREEMENT TO BINDING ARBITRATION: **Change sentence** "In order to secure all indebtedness or liability of Subscriber to SUPERIOR, Subscriber hereby grants SUPERIOR a security interest in all of Subscriber's equipment, inventory and proceeds thereof, accounts receivables and cash on hand and SUPERIOR may execute and file UCC-1 statement" **to read as follows**:

In order to secure all indebtedness or liability of Subscriber to SUPERIOR, Subscriber hereby grants SUPERIOR a security interest in all of Subscriber's equipment installed by Superior Alarms.

19. LEGAL ACTION / ARBITRATION / SECURITY INTEREST / BREACH / LIQUIDATED DAMAGES / AGREEMENT TO BINDING ARBITRATION: **Change sentence** "The parties submit to the jurisdiction and laws of Texas except for arbitration which is governed by the FAA and agree that any litigation or arbitration between the parties may be commenced and maintained in the county where SUPERIOR's principal place of business is located or Nassau County, New York" **to read as follows**:

The parties submit to the jurisdiction and laws of Texas except for arbitration which is governed by the FAA and agree that any litigation or arbitration between the parties shall be commenced and maintained in the county where SUPERIOR's principal place of business is located.

McAllen Independent School District
2000 N. 23rd
McAllen, Texas 78501
(956) 632-3200

_____
Authorized Signature/Date

_____
Printed Name/Title

Superior Alarms
600 Ash Avenue
McAllen, Texas 78501
800-580-6001

_____
Authorized Signature/Date

_____
Printed Name/Title

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (Oct 9, 2020 18:10 CDT)
Stephen Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of First Amendment to the Contract with Indeco Sales, Inc. through Request for Cooperative Quotes No. 2020-311 Demolition and New Installation of Phenolic Restroom Partitions at Brown Middle School and Alvarez Elementary School through Buyboard Cooperative Contract

REFERENCE: Goal 3 – Facility Priorities; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On June 15, 2020, the Board of Trustees awarded this contract to Indeco Sales, Inc. from Belton, TX, to be completed within fifty (50) calendar days.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Due to unforeseen delays, the Contractor was unable to complete the work within the fifty (50) days, as specified in the contract. The First Amendment allows an additional seventy (70) calendar days be added to the term, extending the contract term to October 30, 2020.

LEGAL REVIEW:

The Amendment has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

Administration is recommending that the Board of Trustees approve the First Amendment to the Contract with Indeco Sales, Inc. through Request for Cooperative Quotes No. 2020-311 Demolition and New Installation of Phenolic Restroom Partitions at Brown Middle School and Alvarez Elementary School through Buyboard Cooperative Contract.

SUBMITTED BY: _____ **SUPERVISOR:** Arely Benavides (Oct 7, 2020 15:37 CDT)

For further information contact:
Name: Ruben Treviño
Office: 956-632-3200
eMail: ruben.trevino@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

FIRST AMENDMENT TO CONTRACT NO. 2020-311

Brown Middle School and Alvarez Elementary School Phenolic Restroom Partitions through Interlocal Cooperative Agreement No. 2020-002 Texas Association of School Board (TASB) Buyboard

This First Amendment to the Contract No. 2020-311 is made this 13th day of October, 2020 by and between McAllen Independent School District ("District") and Indeco Sales, Inc., a Texas Corporation ("Contractor") is made between the District and Contractor as follows:

WHEREAS, the District entered into a Contract No. 2020-311 dated June 15, 2020; and

WHEREAS, the District and Contractor desire to amend the Contract to accurately reflect the time of performance.

NOW THEREFORE, for and in consideration of the clarification of the terms and provisions set forth herein and, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Contractor hereby agree to the following amendment to the Contract.

1. Delete the first sentence of the first paragraph of numbered paragraph 12, Term, and insert the following in lieu thereof:
   The term of this Contract shall commence on the date of execution by the District (the "Commencement Date") and will remain effective through October 30, 2020.

2. Except as modified herein, all terms and conditions of the Contract, as amended, remain in full force and effect. District and Contractor ratify and confirm the terms and provisions of the Contract as amended.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
Conrado Alvarado, Board President

INDECO SALES, INC.

By: _____
Martin Pena (Oct 6, 2020 20:44 CDT)

Name: Martin Pena II

Title: Account Manger

Approved as to form:

Atlas, Hall, & Rodriguez LLP

by: _____
Stephen L. Crain (Oct 6, 2020 16:46 CDT)
Stephen Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Request for Cooperative Quotes No. 2021-155 Purchase and Installation of Water Fountains through 2020-002 Texas Association of School Board Buyboard Cooperative

REFERENCE: Goal 3 - Facility Priorities; Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On September 15, 2020, the District solicited quotes through Buyboard Cooperative for purchase and installation of water fountains. New water fountains are to be installed District-wide and shall be ADA compliant.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District received two (2) vendor responses for quotes and one (1) vendor did not respond within given time frame provided. The quotes were reviewed by Ruben Trevino, Executive Director for Facilities, Maintenance, and Operations; Alexandra G. Molina, Child Nutrition Director; and Melissa G. Ortiz, Facilities Project Manager. FMO and CNP are recommending that the Board of Trustees award Noble Texas Builders, LLC, from La Feria, TX, the lowest bidder, through Buyboard Contract #581-19.

LEGAL REVIEW:

The agreement has been approved by legal counsel, subject to receipt and approval of payment and performance bonds.

BUDGETARY CONSIDERATIONS:

Total project cost of $315,920.00 will be split with Child Nutrition Program Federal Funds paying $310,181.00 and Local Funds paying $5,739.00.

RECOMMENDED BOARD ACTION:

Administration is recommending that the Board of Trustees approve Request for Cooperative Quotes No. 2021-155 Purchase and Installation of Water Fountains through 2020-002 Texas Association of School Board Buyboard Cooperative and award Noble Texas Builders, LLC.

SUBMITTED BY: _____ **SUPERVISOR:** Arely Benavides (Oct 8, 2020 18:03 CDT)

For further information contact:
Name: Ruben Trevino
Office: 956-632-3200
email: ruben.trevino@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Interlocal Cooperative Agreement No. 2021-153 Sourcewell Purchasing Cooperative

REFERENCE: Goal 4 - Financial Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Sourcewell is a customized electronic purchasing system which is administered through the Local Government Purchasing Cooperative. The Agency was created in accordance with Section 123A.21 of the Minnesota Government Code. Its purpose is to provide efficiencies for members of a cooperative, to comply with state bidding requirements, and to identify qualified vendors of commodities, goods, and services. Membership is free and the District benefits from the Purchasing Cooperatives. Administration recommends approval of awarded Contracts available through the Interlocal Purchasing Cooperatives as an additional procurement resource. In order to obtain the best value, staff will obtain quotes when making purchases, according to Purchasing thresholds.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District utilizes the contracts available through purchasing cooperatives as an additional resource for the acquisition of goods and services for students and staff on an as-needed basis in accordance with Texas Education Code, Chapter 44, Section 44.0331.

LEGAL REVIEW:

The agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for these purchases are budgeted through local, state, federal and grant funds. Purchases will be made on an as needed basis using budgeted funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Interlocal Cooperative Agreement No. 2021-153 Sourcewell Purchasing Cooperative, using budgeted funds.

SUBMITTED BY: Alejandra Gonzalez (Purchasing)
Alejandra Gonzalez (Purchasing) (Sep 25, 2020 11:59 CDT)

SUPERVISOR: Cynthia Medrano-Richards

For further information contact:
Name: Alejandra Gonzalez
Office: 956-632-3241
email: alejandra.gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Sourcewell
Formerly NJPA

SOURCEWELL AGREEMENT

This Agreement, made effective on the date hereof, by and between Sourcewell (formerly known as National Joint Powers Alliance) and McAllen ISD (hereinafter referred to as the "Member").

Agreement

1. Sourcewell, a public entity whose creation was authorized by Minn. Stat. § 123A.21, has followed procurement procedures for products and services offered by this Agreement in accordance with Minn. Stat. § 471.345. Sourcewell is permitted to engage in cooperative purchasing pursuant to Minn. Stat. § 123A.21 Subd. 7(23).

2. It is the sole responsibility of each Member to follow state and local procurement statutes and rules as it pertains to cooperative purchasing or joint power Agreements with in-state or out-of-state public agencies.

3. Sourcewell makes cooperative purchasing contracts available to Members "as is," and is under no obligation to revise the terms, conditions, scope, price, and/or any other conditions of the contract for the benefit of the Member. Members are permitted to negotiate and agree to additional terms and conditions with Vendors directly.

4. Each party shall be responsible for its acts and the results thereof, to the extent authorized by law, and will not be responsible for the acts of the other party and the results thereof. The Member will be responsible for all aspects of its purchase, including ordering its goods and/or services, inspecting and accepting the goods and/or services, and paying the Vendor who will have directly billed the Member placing the order.

5. The use of each contract by the Member will adhere to the terms and conditions of the Sourcewell contract.

6. Any dispute which may arise between the Member and the Vendor are to be resolved between the Member and the Vendor.

7. This Agreement incorporates all Agreements, covenants and understandings between Sourcewell and the Member. No prior Agreement or understanding, verbal or otherwise, by the parties or their agents, shall be valid or enforceable unless embodied in this Agreement. This Agreement shall not be altered, changed or amended except by written amendment executed by both parties.

Member Name	**Sourcewell**
By _____	_____
Its _____	_____
TITLE	TITLE
_____	_____
DATE	DATE

Approved as to form:
Atlas, Hall & Rodriguez, LLP
by: Stephen L. Crain (Sep 23, 2020 08:06 CDT)
Stephen Crain

Rev. 5/2018

202 12th Street NE | P.O. Box 219 | Staples, MN 56479 888-894-1930 | www.sourcewell-mn.gov

MEMBER INFORMATION

Indicate an address to which correspondence may be delivered.

Organization Name*	McAllen Independent School District
Address*	2000 N. 23rd St.
City	McAllen
State/Province Code	Texas ZIP code* 78501
Country	U.S.A.
Employer Identification Number	74-6001658
Website	www.mcallenisd.org/
Contact person* (First, Last)	Jose Gonzalez
Job Title*	McAllen ISD Superintendent
Job Role*	Superintendent of School District
E-mail*	jose.gonzalez@mcallenisd.net
Phone*	956-618-6027

Organization Type:

Government

__ Federal
__ State
__ County
__ Municipality
__ Tribal
__ Township
__ Special District

Education

__ Pre-K
X Public K-12
__ Private K-12
__ Public Higher Ed
__ Private Higher Ed

Non-Profit (Please include documentation demonstrating non-profit status)

__ Church

__ Medical Facility

__ Other

REFERRED BY

___ Advertisement

___ Colleague/Friend

___ Vendor Representative

___ Conference/Trade Show_____

_X_ Search Engine/Web Search

RETURN COMPLETED AGREEMENT TO:

Sourcewell
202 12th Street NE
P.O. Box 219
Staples, MN 56479

877-585-9706
membership@sourcewell-mn.gov

**Denotes required information*

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of First Amendment to Agreement No. 2021-068 Communities In Schools of Hidalgo County, Inc.

REFERENCE: Goal 1: Student Achievement/Student Focus; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On August 31, 2020, the Board of Trustees approved Agreement No. 2021-068 Communities In Schools of Hidalgo County, Inc.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

McAllen ISD and Communities in Schools of Hidalgo County, Inc., desire to amend the contract to correctly reflect the Title of the contract to McAllen Independent School District Contract No. 2021-068 Communities in Schools of Hidalgo County, Inc., the term of the contract to remain effective through July 31, 2021, and update contract amount to $210,000.00 on Exhibit B.

LEGAL REVIEW:

The amendment has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

Administration is recommending that the Board of Trustees approve First Amendment to Agreement No. 2021-068 Communities In Schools of Hidalgo County, Inc.

SUBMITTED BY: Anjanette I. Gonzalez-Garza

SUPERVISOR: Silvia Ibarra
Silvia Ibarra (Sep 29, 2020 14:16 CDT)

For further information contact:
Name: Anjanette I. Garza
Office: 956-632-3232
eMail: anjanette.gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

FIRST AMENDMENT TO CONTRACT NO. 2021-068
Communities in Schools of Hidalgo County Inc.

This First Amendment to the Contract No. 2021-068 is made this 13th day of October, 2020 by and between McAllen Independent School District ("District") and Communities in Schools Inc. ("Contractor") is made between the District and Contractor as follows:

WHEREAS, the District entered into a Contract No. 2021-068 dated September 1, 2020; and

WHEREAS, the District and Contractor desire to amend the Contract to accurately reflect the specifications.

NOW THEREFORE, for and in consideration of the clarification of the terms and provisions set forth herein and, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Contractor hereby agree to the following amendment to the Contract.

1. Title of contract is hereby amended to read:

   MCALLEN INDEPENDENT SCHOOL DISTRICT
   Contract No. 2021-068 Communities in Schools of Hidalgo County Inc.

2. Term of the contract, Numbered paragraph 12 Term and Termination of Contract shall be deleted in its entirety and the following is substituted in lieu thereof:

   Term. The term of this Contract shall commence on the Commencement Date and remain effective through July 31, 2021. All Services must be completed during the term of this Contract.

3. Exhibit B of the Contract is deleted in its entirety and Exhibit B attached hereto is substituted in lieu thereof;

4. Except as modified herein, all terms and conditions of the Contract, as amended, remain in full force and effect. District and Contractor ratify and confirm the terms and provisions of the Contract as amended.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
Conrado Alvarado,
Board of Trustees President

NAME OF COMPANY

By: _____
david kennedy (Sep 24, 2020 09:54 CDT)
David "Gus" Kennedy, Executive Director

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (Sep 24, 2020 07:45 CDT)
Stephen Crain

EXHIBIT “B”

DEFINITION OF COST

District agrees to:

1. Pay Contractor the sum of Two Hundred Ten Thousand and no/100 Dollars ($210,000.00) for services rendered by Contractor during the 2020-2021 school year at the following nine (9) campuses: Alonzo De Leon Middle School, Dorothea Brown Middle School, Dr. Rodney D. Cathey Middle School, Homer J. Morris Middle School, Michael E. Fossum Middle School, William B. Travis Middle School, Nikki Rowe High School, McAllen High School and Memorial High School.

2. Such Two Hundred Ten Thousand and no/100 Dollars ($210,000.00) shall be payable on or before the fifteenth (15th) day of each month as specified herein in monthly payments of Thirty Thousand and 00/100 Dollars ($30,000.00) each, beginning September 14, 2020 and continuing through April 30, 2021. In addition, to conclude the 2020-21 year the last payment in May 31, 2021 shall be for Thirty Thousand and 00/100 Dollars ($30,000.00).

3. Administrative costs are non-allowable under this Agreement.

4. Provide available and reasonable facilities adequate to implement the services agreed upon in this Agreement.

5. McAllen ISD will provide a venue for CIS-Hidalgo to host their summer program that will run from June 1st-July 31st.

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Request for Proposal No. 2021-002 - International Pharmacy

REFERENCE: Goal 4, Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District self-funded Medical Plan (Plan) includes Prescription Drug benefits. Administration continues to monitor the Plan's prescription drug utilization and must consider the best management practices to manage the increased pharmacy cost trend.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Forty-four (44) vendors were invited to provide pricing for a select number of prescription drugs sourced through an international pharmacy program, and one (1) vendor responded.

On July16, 2020, the evaluation committee, comprised of Andres Silva, Director of Employee Benefits, Safety & Risk Management; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Purchasing Coordinator; Elizabeth Montes, Senior Buyer; consulted with Valley Risk Consulting, and evaluated the submittal and recommends award to ElectRx and Health Solutions LLC.

ElectRx and Health Solutions LLC provides self-insured plans with a strategy to control the rising cost of drugs by sourcing bioequivalent, FDA approved version of drugs through International pharmacies, primarily in Canada but also New Zealand, Australia, and England, at a lower cost than available domestically. Drugs are mailed directly to consumers as in a traditional mail-order drug program.

A select list of the high-cost drugs will be sourced first through the vendor. The number of drugs is low, to reduce the impact to the number of members, but targeted to add to cost savings to the Plan (Attachment A). Adding or dropping of drugs from this program will be considered throughout the contract period as new drugs come into the market. Administration is proposing to waive the applicable prescription copays for these select drugs, effectively making the drugs free to the consumer as there is no copay or shipping cost. Enrollment in the international pharmacy for both existing utilizers and new utilizers would be mandatory for the targeted drugs.

The implementation date is targeted for January 1, 2021, to coincide with the benefit plan year.

LEGAL REVIEW:

The draft Agreement has been approved by legal counsel and is pending vendor approval.

BUDGETARY CONSIDERATIONS:

Prescription drug claims are paid through the health plan fund.

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2021-002 International Pharmacy and award ElectRx and Health Solutions LLC for a three (3) year term through December 31, 2023.

SUBMITTED BY: Andres Silva (Oct 9, 2020 18:12 CDT)

SUPERVISOR:

For further information contact:
Name: Andres Silva
Office: (956)618-7380
eMail: andres.silva@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

MCALLEN INDEPENDENT SCHOOL DISTRICT

International Pharmacy

(Elect Rx) Saving Analysis

Top 14 Drugs

Compared to Data from 1/1/20 - 6/30/20

Label name	Claims	Current Rx Cost per drug	Current Total	Elect Rx Cost per drug	Elect Rx Total	Estimated Savings	Estimated Annual Savings
Humira Pen Inj 40 MG/0.8	38	$5,468	$207,784	$2,686	$102,068	$105,716	50.88%
Trulicity Inj 1.5/0.5	168	$1,115	$187,320	$492	$82,718	$104,602	55.84%
Farxiga Tab 10 MG	97	$891	$86,427	$367	$35,599	$50,828	58.81%
Januvia Tab 100 MG	45	$1,168	$52,560	$348	$15,660	$36,900	70.21%
Copaxone Inj 40 MG/ML	5	$6,750	$33,750	$1,726	$8,630	$25,120	74.43%
Enbrel Sure Click Inj 50 MG/ML	20	$5,414	$108,280	$2,819	$56,380	$51,900	47.93%
Gilenya Cap 0.5 MG	5	$8,500	$42,500	$3,657	$18,285	$24,215	56.98%
Jardiance Tab 25 MG	45	$983	$44,235	$343	$15,435	$28,800	65.11%
Ozempic Inj 2/1.5 ML	122	$940	$114,680	$395	$48,190	$66,490	57.98%
Xigduo XR	45	$1,086	$48,870	$385	$17,325	$31,545	64.55%
Norditropin Flexpro	6	$7,436	$44,616	$4,562	$27,372	$17,244	38.65%
Janumet	57	$737	$42,009	$260	$14,820	$27,189	64.72%
Synjardy	36	$956	$34,416	$289	$10,404	$24,012	69.77%
Ibrance Cap 125 MG	4	$12,226	$48,904	$6,403	$25,612	$23,292	47.63%
			$1,096,351		**$478,498**		**-$617,853**
							-56.36%

"Member has no copay with International Pharmacy Program"

Prepared By: Valley Risk Consulting: Roger Garza, LRM, LUTCF, LHIC
Source: Araya Rx Mid Year Review & RFQ# 2021-002

MCALLEN INDEPENDENT SCHOOL DISTRICT
CONTRACT NO. 2021-164 ElectRx and Health Solutions LLC through Request for Proposal No. 2021-002

This contract ("Contract"), made and entered into effective by and between **McALLEN INDEPENDENT SCHOOL DISTRICT** (hereinafter referred to as "District") and ElectRx and Health Solutions LLC, a Michigan LLC (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, District recognizes that the **Employee Benefits Department** of District (the "Department") requires certain services ("Services") rendered by Contractor who has the training, experience, and qualifications necessary to provide the services;

WHEREAS, District requested proposals from vendors for Services, more particularly described on Exhibit A attached hereto ("District's Request for Proposal No. 2021-002");

WHEREAS, Contractor submitted a response to the District's proposal;

WHEREAS, District has determined that the proper, orderly and efficient delivery of quality Services for the District can be accomplished best by contracting with Contractor in accordance with the local, state and federal regulations for procurement;

WHEREAS, District has determined that for proper and efficient operation of the Department, several objectives must be met, including, among others, coordination of schedules and assignments, administrative ease and efficiency, consistency and uniformity in book and recordkeeping, and the delivery of quality Services;

WHEREAS, the Contractor is willing to accept the responsibility of providing the Services to the District in accordance with recognized standards, the Board Policies of District, applicable laws and regulations and the terms and conditions set forth in this Contract; and

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the provision of the Services by Contractor during the term of this Contract;

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. **OBLIGATIONS OF THE CONTRACTOR**

Contractor shall perform all of the work and provide all equipment, materials, and labor required in accordance with the terms and conditions of the Contract Documents, as hereinafter defined.

Contractor represents and warrants to District that Contractor possesses all of the licenses, permits, and expertise required to provide the equipment, materials, and labor and perform the services contemplated hereunder. Contractor warrants and represents that during the term of this Contract, Contractor shall maintain all such licenses and

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permits. Contractor warrants that the services rendered and equipment, materials, and labor furnished shall be in accordance with the terms of the Contract Documents.

The term Contract Documents as used herein shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract. The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

A. This Contract

B. Exhibit "A" – District's Request for Proposal No. 2021-002

C. Exhibit "B" – Vendor's Services, Products and Fees Pursuant to Request for Proposal No. 2021-002

D. Exhibit "C" – Certificate of Insurance

This Contract is entered into subject to the following conditions:

A. Contractor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees of District and /or the learning environment of students of District while performing its work in accordance with the Contract Documents.

B. Contractor assumes full responsibility and liability for all labor and materials furnished and activities conducted by Contractor pursuant to this Contract and any action or omission incident thereto.

2. INSURANCE COVERAGE

At all times during the term of this Contract, Contractor will, at Contractor's expense, carry and maintain the following insurance coverages with the minimum coverage amounts as follows:

A. Statutory Workers' Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - $500,000

B. Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate.

C. Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000. No deletions/exclusions from standard coverage form allowed without written consent of District. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

D. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job.

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E. The Contractor will provide a certificate of insurance to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason. Such Certificate of insurance shall be attached to this Contract as Exhibit C.

3. TRANSFER, ASSIGNMENT, ETC.

Contractor agrees, for itself and on behalf of its successors, and any person or persons claiming under Contractor by virtue hereof, that this Contract and the rights, interests, and benefits hereunder cannot be assigned, transferred, pledged, or hypothecated in any way and shall not be subject to execution, attachment, or similar process. Any such attempt to do so, contrary to the terms hereof, shall be null and void and shall relieve the District of any and all obligations or liability hereunder.

4. ADJUDICATION

If any provision, paragraph, or subparagraph of this Contract is adjudged by any court of law to be void or unenforceable, in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of the Contract, including any other provision, paragraph, or subparagraph.

5. PROVISIONS, PARAGRAPHS

Each provision, paragraph, and subparagraph of this Contract is declared to be separable from every other provision, paragraph, and subparagraph and constitutes a separate and distinct covenant.

6. PAYMENT

As consideration for performing the services and supplying the equipment, materials and labor pursuant to the Contract Documents, District agrees to pay Contractor a cost consistent with the pricing agreed upon, a copy of which is attached hereto as Exhibit B and is incorporated herein for all purposes. The payment for services, materials, and labor shall be paid by District to Contractor as invoiced upon successful and satisfactory installation of equipment and materials pursuant to the Contract Documents upon verification by District's authorized representative of such invoice in compliance with the Contract Documents.

7. TAXES AND BENEFITS

Contractor expressly acknowledges that Contractor will be acting as an independent contractor for all purposes, including payment of social security, withholding taxes, and all other federal, state, and local taxes. Contractor, as independent contractor, shall be solely responsible to its employees, agents, third party contractors any other person supplying labor or material for Contractor in performing any portion of this Contract or any action or omission incident

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thereto. Contractor also agrees to pay for and provide workers compensation insurance covering all employees working for Contractor in performing labor pursuant to this Contract or any activity incident thereto.

8. INCURRING FINANCIAL OBLIGATION

The Contractor will incur no financial obligation on behalf of District without prior written approval of the Superintendent of District. The Contractor will be responsible for all personal and professional expenses.

9. ACCESS TO BOOKS AND RECORDS

Contractor recognizes that District is a participant in governmental payment programs. In connection with such programs, the Contractor agrees to cooperate with District and provide to District reasonable assistance in District's efforts to meet the requirements for participation in and payment under such programs.

10. NON-DISCRIMINATION

Contractor will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing services under this Contract or in the selection of associates, employees, or independent contractors.

11. HOLD HARMLESS

Contractor agrees to hold harmless and indemnify District from any liability and/or damages, which may directly or indirectly arise from or occur in connection with Contractor's performance under this Contract or any action, activity or omission incident thereto. Such indemnification shall include but not be limited to all District's attorneys' fees and costs incurred in defending or responding to any action brought or threatened against District for any action or omission arising from or incident to Contractor's performance under this Contract.

12. TERM AND TERMINATION OF CONTRACT

Term. The term of this Contract shall be for a term of three (3) years, commencing January 1, 2021 through December 31, 2023. All services must be completed during the term of the Contract.

A. **Termination without Cause**. District shall have the right to terminate this Contract without cause on thirty (30) days written notice to the Contractor.

B. Termination with Cause.

a. Termination by District. District may terminate this Contract immediately upon the occurrence of any of the following events:

i. Any conduct of the Contractor, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 2 hereof.

iii. Failure of Contractor to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

iv. In addition, if the Contractor commits a material breach of any of the terms of this Contract, other than those listed in subsections (i) through (iii) above, District may terminate this Contract upon no less than thirty (30) days written notice.

b. Termination by Contractor. In the event District breaches any material term of this Contract, Contractor may terminate this Contract upon no less than fifteen (15) days written notice.

c. Non-Interference. Following the expiration of this Contract or its termination for any reason, Contractor agrees to do nothing that may interfere with any contract of District with any other individual or entity for the provision of the services herein.

13. NOTICES

All notices provided to be given under this Contract shall be given in writing and will be deemed delivered when deposited in the United States Postal Service by certified or registered mail, addressed to the proper party, at the following addresses:

If to District:
McAllen Independent School District
Attn: Jose A. Gonzalez, Superintendent
2000 N. 23rd Street
McAllen, Texas 78501

If to Contractor:
ElectRx and Health Solutions LLC
Attn: Jeff Dinsmore
32232 Crossbow
Beverly Hills, Michigan 48025

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this section.

14. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS CONTRACT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THIS AGREEMENT ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS.

15. NO IMPLIED WAIVER

No waiver or modification of the Contract Documents shall be valid unless it is in writing and signed by the District and Contractor.

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16. SEVERABILITY

The invalidity or unenforceability of any provisions of this Contract will not affect the validity or enforceability of any other provision.

17. ASSIGNABILITY

The right and obligations of District hereunder shall inure to the benefit of and be binding upon the successors and assigns of District. The Contractor may not assign Contractor's rights or obligations under this Contract without District's written consent. Any assignment in violation of this provision shall give District the right to terminate this Contract immediately, upon written notice to the Contractor.

18. AMENDMENTS

All provisions of the Contract Documents shall be strictly complied with and performed by Contractor; and no amendment to this Contract shall be made except upon the written agreement by the parties. No amendment shall be construed to release either party from any obligation, representation, and/or warranty of the Contract Documents except as specifically provided for in such amendment.

19. ENTIRE CONTRACT

This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof. This Contract supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the subject matter the Contract.

20. INTERPRETATION

The defined terms used herein are for convenience only and do not limit the contents of this Contract.

21. VARIATIONS OF PROUNOUNS

All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

22. AUTHORIZATION FOR CONTRACT

The execution and performance of this Contract by District and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes the valid and enforceable obligations of Contractor and District in accordance with its terms.

23. IMMUNITIES

Nothing in this Contract is intended to and District does not hereby waive, release or relinquish any right to assert any of the defenses District enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any

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sovereign, official or qualified immunity available to District as to any claim or action of any person, entity, or individual against District.

24. NON-APPROPRIATION OF FUNDS.

In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the payments for the services are due under this Contract, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Contractor and any assignee of such occurrence. This Contract shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under this Contract relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Contractor or its assignee stop the services on the date of such termination.

25. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA).

Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent except as provided in the Family Educational Rights and Privacy Act (FERPA).

26. CRIMINAL HISTORY INFORMATION.

Pursuant to Texas Education Code Section 22.0834, Contractor shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of the Contractor if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the contracted services herein, and the duties are or will be performed on school property or at another location where students are regularly present. Contractor shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process was followed.

Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District's property or other location where students are regularly present, District shall be the final decider of what constitutes a "location where students are regularly present". Contractor's violation of this section shall constitute a material breach of contract. If the Contractor is the person, owner, or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence of compliance acceptable to District, with this Contract.

27. ENTITIES THAT BOYCOTT ISRAEL

If Contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Contractor does not make that certification, Contractor must indicate that in its Response and state why the certification is not required.

28. Sec. 2252.152 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.

A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

Sec. 2252.153. **LISTED COMPANIES**. The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

Sec. 2252.154. **EXCEPTION.** Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3. This Act takes effect September 1, 2017.

29. BREACH OF CONTRACT AND FEES

If either party hereto shall breach any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including attorney's fees, incurred by such party in enforcing the terms of this Contract.

30. FURTHER DOCUMENTS

The parties hereto covenant and agree that they will execute such other and future instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

31. BINDING NATURE

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

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32. CONTRACT TERMS CONTROL

The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

IN WITNESS WHEREOF, the execution and performance of this Contract by each of the parties hereto have been duly authorized by all necessary laws, resolutions, ordinances, or governing body action, and this Contract constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms.

EXECUTED on _____
Date

DISTRICT:

McAllen Independent School District

By:_____
Conrado Alvarado, Board President

ElectRx and Health Solutions LLC

By:_____

Name:_____

Title:_____

Approved as to form:
Atlas Hall & Rodriguez, LLP
by: _____
Stephen Crain

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Exhibit "A" – District's Request for Proposal No. 2021-002

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ALEJANDRA GONZALEZ
Director of Purchasing Services

June 10, 2020

McAllen Independent School District (the "District") invites your submittal on:

RFP No. 2021-002 – International Pharmacy

In light of the pandemic, **only electronic submittals will be accepted** through Public Purchase (https://www.publicpurchase.com/) and shall be received **no later than** 3:00 p.m. local time, June 24, 2020.

Submittals received after this deadline will be void and unacceptable.

Any questions regarding this solicitation must be submitted through the "Questions" option located on the Public Purchase website, no later than 10:00 AM, June 18, 2020. Questions/clarifications regarding this solicitation will not be answered by phone nor email.

Thank you,

Alejandra Gonzalez
Director of Purchasing Services

SECTION A
GENERAL TERMS AND CONDITIONS

Please read the following information carefully. Any exceptions to these terms and conditions will be cause for a proposal to be disqualified. Additionally, please read the Specifications and Scope of Work contained in each Invitation for Request for Proposal ("RFP"). The Specifications and Scope of Work in the RFP will take precedence over the General Terms and Conditions when they are in conflict. Prospective Proposers are responsible for familiarizing themselves with all aspects of the process for the Request for Proposal.

1. ProposerGuarantee:
   - 1.1 Proposer agrees to comply with all terms and conditions contained in this document and the RFP.
   - 1.2 Proposal must comply with all federal, state, county, and local laws concerning these types of goods/services.
   - 1.3 Proposer guarantees products/services offered will meet or exceed the written specifications identified in the RFP.
   - 1.4 Proposer agrees to protect the District from claims involving infringement of patents or copyrights.
   - 1.5 Minimum Standards for Responsible Prospective Proposers: The business must be a well- established organization and have an adequate number of trained personnel to ensure quality and performance and completion of contract within a specified time period. A prospective Proposer must affirmatively demonstrate Proposer's responsibility. District may request representation and other information sufficient to determine Proposer's ability to meet the following minimum standards:
     - 1.5.1 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in district, state or federal procurements or contracts;
     - 1.5.2 are not identified in the "Debarment and Suspension" issued by the General Services Administration;
     - 1.5.3 have adequate financial resources, or the ability to obtain such resources as required;
     - 1.5.4 be able to comply with the required or proposed delivery schedule;
     - 1.5.5 have a satisfactory record of performance;
     - 1.5.6 have a satisfactory record of integrity and ethics;
     - 1.5.7 be otherwise qualified and eligible to receive an award.
   - 1.6 Contract: This proposal, when properly accepted by District, shall constitute a contract equally binding between the awarded Proposer and District. Different or additional contractual terms may become a part of this contract.
   - 1.7 Conflict of Interest: Any purchase order of contract resulting from this process shall be considered null and void if the awarded Proposer fails to comply with Section 1, Subtitle C, Title 5, Local Government Code Chapter 176: Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information, specifically Sec. 176.006: Disclosure Requirements for Contractors and Other Persons; Conflict of Interest Questionnaire Form CIQ.
   - 1.8 Criminal History Record Information Review: Proposer agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. Proposer, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. Proposer agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. Proposer agrees that if awarded a contract, Proposer will provide to the District a list with names of all of their employees and any subcontractor's employees before commencing any services. Proposer further agrees to provide written notice of any new employees and any new subcontractor's employees to the District immediately after employment. Proposer further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.
   - 1.9 Entities that Boycott Israel: If Proposer is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Proposer certifies that Proposer does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Proposer does not make that certification, Proposer must indicate that in its Response and state why the certification is not required.
   - 1.10 Sec. 2252.152. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.
     - Sec. 2252.153. LISTED COMPANIES. The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
     - Sec. 2252.154. EXCEPTION. Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3. This Act takes effect September 1, 2017.
   - 1.11 Form 1295. Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 to District before Proposer may enter into a contract with that business entity. **Form must be completed online.** If this is your first time to access the Texas Ethics Commission (TEC), you will be required to create an account and establish a user name and password. This will require for you to have a valid email address and know your email user name and password as you will be required to access your email to validate your identity. After creating a user name and password at TEC, you will log in and begin completing Form 1295. Completing Form 1295 will require a contract number, which identifies and ties the form to the District's contract number; which is the assigned RFP No. for this solicitation.
     How to complete Form 1295:
     - Go to website: http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
     - Enter Required information
     - Print form
     - Submit with proposal
   - 1.12 Campus Visitation Procedures: If Proposer is awarded a contract which requires on-site visit, Proposer must first report to the front office and must be prepared to present a valid driver's license for clearance through the District's security system.
   - 1.13 Representations: Proposer represents that the products/services provided by Proposer hereunder shall conform to the representations of same as represented and described in the Attachments. Notwithstanding anything to the contrary herein, if for any reason District determines in its sole discretion, that part or all of such products/services fail to meet the expectation of District, District may on ten (10) days' notice terminate this Contract and receive the pro-rata portion of the contract sum paid to Proposer by District for the unexpired

term of the Contract.

1.14 Proposer, in submitting this proposal, agrees that District shall not be liable to prosecution for damages in the event that District declares Proposer in default.

1.15 Purchases made for school use are exempt from the state sales tax and federal excise tax. Do not include these taxes in your proposal. Both unit prices and extension must be submitted. Unit prices shall govern.

1.16 Adherence to Specifications and Anti-Collusion: Proposer is responsible for reading the instructions and specifications to Proposer. Each Proposer by making his proposal represents that he has read and understands the proposal documents and his proposal is made in accordance therewith. Signing this proposal affirms that your company will enter into a binding contract with District for products/services awarded to your company. Proposer, by signing and executing this proposal, certifies and represents to the District that Proposer has not offered, conferred or agreed to confer any pecuniary benefit, as defined by §1.07(a)(6) of the Texas Penal Code, or any other thing of value, as consideration for the receipt of information or any special treatment or advantage relating to this proposal; Proposer also certifies and represents that Proposer has not offered, conferred or agreed to confer any pecuniary benefit or other things of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this proposal; Proposer certifies and represents that Proposer has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the District concerning this proposal on the basis of any consideration not authorized by law; Proposer also certifies and represents that Proposer has not received any information not available to other Proposers so as to give the undersigned a preferential advantage with respect to this proposal; the Proposer further certifies and represents that Proposer has not violated any state, federal or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that Proposer will not in the future offer, confer, or agree to confer any pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the District in return for the person having exercised the person's official discretion, power or duty with respect to this proposal; Proposer certifies and represents that it has not now and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the District in connection with information regarding this proposal, the submission of this proposal, the award of this proposal or the performance, delivery or sale pursuant to this proposal.

1.17 Bid Guarantee: Bid bonds may be required for certain bids/proposals in excess of $25,000, if stated in the RFP. A bid guarantee will be submitted in the form of a bid bond, postal money order, certified check or cashier's check in an amount not less than 5% of the total maximum amount bid/proposed, payable without recourse to McAllen Independent School District. Failure to furnish a bid guarantee in the proper form and amount by the time set for opening may be cause for rejection of the proposal. If the awarded Proposer, upon acceptance of his proposal by the District within the period specified therein for acceptance, fails to execute such further contractual documents, if any, and give such bond(s) (i.e., performance bonds, payment bonds, delivery, etc.) as may be required within the time specified (ten days if no period is specified) after receipt of the forms by him, then he shall be liable for any cost of procuring the work which exceeds the amount of his proposal, and the bid guarantee shall be available toward offsetting such difference.

1.18 Performance and Payment Bonds: Payment bonds are required on construction projects costing $25,000 or more. Performance bonds are required on construction projects costing $100,000 or more. Payment and Performance bonds may be required for projects other than construction, if stated in the RFP. When a performance or payment bond is required, the amounts shall be for 100% of the contract amount.

1.18.1 Any required bond(s) must be filed with the District within 10 days from the date of the NOA.

1.18.2 Payment and performance bonds must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

1.18.3 Bonds may be executed only by a surety company that is authorized and admitted to write surety bonds in the State of Texas.

1.18.4 A separate performance or payment bond MUST be provided for each contract awarded and must reference the contract number(s) for which the bond is provided.

1.18.5 All references to the bond by Proposer and/or surety companies must reference the contract number in lieu of or in addition to the bonding company's number, and the effective dates of the contract.

1.18.6 Bonds and other forms of surety must be made payable to McAllen Independent School District. Bonds in excess of $100,000 must be from a surety that holds a Certificate of Authority from the United States Department of Treasury or have reinsurance for liability in excess of $100,000 from a United States Treasury listed reinsurer.

2. General Provisions

2.1 Term of Contract and Purchase Order Dates:

2.1.1 The RFP shall state the term of the contract and applicable extensions.

2.1.2 Purchase Order: Purchase order(s) shall be generated by the District to the awarded Proposer(s). **The purchase order number must appear on all itemized invoices and packing slips. District will not be held responsible for any orders placed/delivered without a valid signed purchase order.**

2.1.3 Purchase orders dated during the term of the contract must be honored even if received after the contract expiration date. Proposers may not specify a "final order" receipt date. Pricing is established by the date the order is placed unless otherwise stated in the contract.

2.1.4 Confirmation orders will be the date the order is mailed but will show the date the order was originally placed.

2.1.5 Grace Period: District requests the right to continue to enforce this contract for a period not to exceed ninety (90) days after expiration date for unforeseeable reasons.

2.1.6 District reserves the right to reorder from this proposal for the term of the contract at the proposed award prices or lower provided the terms and conditions remain the same. Proper authorization for reorders and issuance of approved and manually signed purchase orders will be through Purchasing Services only.

2.2 Shipment Identification and Delivery: Special delivery requirements will be addressed in the Specifications and Scope of Work or in the specifications contained in each RFP. The following shall be applicable unless in conflict with specific contract instructions.

2.2.1 Identification of Shipments: In addition to the complete destination address, each package must be clearly marked with the District's purchase order number and the ATTN: addressee as shown on the order. Each shipment must be accompanied by an itemized packing slip.

2.2.2 Packaging and Labeling: All items shipped must be properly labeled showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information usually used by Proposer.

2.2.3 Hours for Delivery: Delivery shall be made between 8:00 a.m. and 3:00 p.m. unless prior approval for after-hours delivery has been obtained from the District.

2.3 Inspection and Tests: All goods are subject to inspection and testing by the District. Authorized District personnel shall have access to a Proposer's place of business for the purpose of inspecting contracted merchandise. Tests may be performed on samples obtained by

District request or taken from regular shipments. When products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by Proposer. Goods that have been delivered and rejected in whole or in part may be, at the District's option, returned to Proposer at Proposer's risk and expense or disposed of in accordance with District procedures. Proposer may request that goods be held at Proposer's risk for a reasonable period of time for later disposition at Proposer's expense. Latent defects may result in revocation of acceptance of any product.

2.4 Late Delivery: If a delivery delay is foreseen, Proposer shall give notice to District with seventy-two (72) hour notice. The District has the right to extend the delivery date if reasons appear valid. Proposer must keep the District advised at all times of the status of the order. If Proposer has orders in their possession which have not been completed within the specified delivery time, the District reserves the right to withhold issuance of further orders until all orders have been filled and acceptable assurance has been given that the event will not be repeated.

2.5 Back Orders: The District may purchase on the open market any commodity reported by a Proposer to be on back order when the resultant delivery time is unsatisfactory. Damages may be applicable in cases of a pattern of back orders.

2.6 Damage Assessment: If a Proposer is in default on an order, the District reserves the right to purchase the item in default and charge the increase in price, if any, and cost of handling to Proposer. Failure to pay a damage assessment is cause for contract cancellation and/or suspension or removal of Proposer from the District's Centralized Master Contractors List (CMBL).

2.7 Emergency Deliveries: In case of an emergency experienced by a qualified ordering entity, the awarded Proposer is requested to supply the needed material immediately, if possible. If the awarded Proposer cannot respond, then the emergency requirement may be purchased on the open market. The District or Proposer shall not consider such purchases a breach of contract.

2.8 Substitutions: All substitutions require prior written approval by the District. The District reserves the right to require Proposer to offer possible substitutes if any material or equipment becomes unobtainable during the term of the contract. Outstanding orders are not automatically amended by an approved substitution. Proposer must contact the qualified ordering entity prior to shipment of the approved substitution.

2.9 Purchases Off Contract: Under certain circumstances, the District permits campuses and other District users to purchase commodities available through a contract on the open market. Such circumstances may be identified in the RFP. Proposers are to allow for such purchases provided purchase orders are issued for these purchases.

2.10 References: District may request Proposers to supply, with this proposal, a list of at least three (3) references where like goods/services have been supplied by their firm. Include name of firm, address, telephone number and name of representative.

2.11 Proposals from unresponsive Proposers will not be accepted. Proposers having a history of inconsistent service and unreliability will not be considered by the District to be a responsible Proposer.

2.12 Proposer will employ accounting policies and procedures hereunder to preserve all contract-related records for the term of this Contract and such further period of time thereafter as may be prescribed by Federal, State or Local regulations. All Proposers are subject to having any records or other documentation related to any transaction with District available for public access or for review and auditing purposes by any local, state or federal agency, as well as, the public in accordance with the provisions of Government Code, Title 5, Subtitle A, Chapter 552, Open Records.

2.13 Notice: Any notice provided by this proposal (or required by Law) to be given to the awarded Proposer by District shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in McAllen, Texas, by Registered or Certified mail, addressed to the awarded Proposer at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

2.14 Venue: This contract will be governed and construed according to the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in Hidalgo County, Texas.

2.15 Silence of Specification: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

2.16 Deviations from Specifications: All deviations from the specifications must be noted in writing, in detail by Proposer at the time of submittal of the proposal. The absence of a written list of specification deviations will hold Proposer strictly accountable to the District to the specifications as written. Any deviations from the specifications as written not previously submitted, as required, will be grounds for rejection of the materials/goods/services and/or equipment when delivered.

2.17 Proposers that fail to comply with the conditions of the RFP may be removed from the District's Centralized Master Contractors List for a period of two years.

2.18 Proposers wishing to reinstate their status must request it in writing at the end of the two-year period.

3. Preparation of Proposal:

3.1 Freight Charges & F.O.B. Point: Quote all proposals F.O.B. destination, transportation prepaid and allowed, i.e., included in the price proposed, unless special contract instructions direct or permit otherwise. Alternate F.O.B. point or freight terms may be offered but are subject to rejection by the DISTRICT.

3.2 Proposal prices must be firm for acceptance for 120 days from proposal opening date unless otherwise specified in the RFP. Proposal prices shall remain in effect for a period of one year from date of acceptance by the Board of Trustees unless otherwise specified in the proposal documents. Refer to Section 7 for additional information regarding proposal prices.

3.3 Usage Figures: Quantities shown on the RFP under the term "Quantity or Qty" are estimated requirements based upon purchase orders for a prior period indicated in the RFP. These figures are not to be construed as guaranteed purchases under the contract; however, the figures will be used as a factor for determining the award and bonding requirements. District users will purchase all commodity requirements from contract Proposers but only in such quantities as actual needs require. To keep consistency of the item description and item numbers, some item quantity(s) is/are marked with a zero (0) quantity on the proposal sheet. Proposals are requested on these items as well.

3.4 Referenced Example: Any catalog number, brand name or manufacturer's reference used in an RFP is descriptive only (not restrictive) and is used to indicate type and quality desired. Proposals for brands of like nature and quality will be considered. Proposer should not construe specifications for the referenced example to be the minimum requirements acceptable. The District is the sole determinate as to acceptability of specifications in its best interest. If proposing other than the referenced example, Proposer must show the manufacturer, brand or trade name, and model number and give a full description of the product offered. The submission of illustrations and specification brochures is encouraged to provide a complete description of the product being offered. If a Proposer takes no written exception to the referenced example in the proposal, the brand names, numbers, etc., exactly as specified in the RFP shall be furnished.

3.5 Condition of Products: All items proposed shall be new and unused and in first class condition, including containers suitable for shipment and storage, unless otherwise specified in the RFP.

3.6 Warranty: Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.

3.7 Unit of Measure: If offering a proposal price for a different unit of measure, the exception and proposed packaging must be shown by the line item proposal.

3.8 Alternate Proposals: Alternate or supplemental proposals shall be submitted as a separate item and be identified by Proposer's name and signature and be cross-referenced to the applicable item in the RFP.

3.9 Samples: DO NOT send samples unless requested. Any samples submitted must be furnished at no cost to the District. If not destroyed in examination, samples will be returned to Proposer on request at Proposer's expense. Samples submitted to verify compliance with specifications prior to making an award may be retained at Proposer's expense. Samples submitted to verify compliance with specifications prior to making an award may be retained for the duration of the contract for later comparison with items delivered. Each sample should be marked with Proposer's name, address, proposal opening date and proposal number. Do not attach samples to proposal pages. Failure to submit samples when requested shall cause items not to be considered for award. All samples are to be delivered to:

McAllen Independent School District
Attn: Purchasing Services
4309 Warrior Dr. Bldg. C.
McAllen, TX 78501-7734

3.10 Signature on Proposal: Electronic signatures are acceptable. The person signing the proposal must have authority to bind the represented company to a contract. An unsigned proposal cannot be signed after the proposal opening time even though Proposer or a representative is present at the proposal opening.

3.11 Attachments: Proposers may include attachments to describe commodities being proposed and/or to exhibit that products offered meet all written specifications; however, do not submit samples unless requested to do so. No terms or conditions recorded on any attachment will be considered binding unless specifically made a part of the proposal in writing. WARNING: Any added terms or conditions may result in disqualification of a proposal, e.g., proposals subject to laws of a state other than Texas, requirements for prepayment, limitations on remedies, etc.

3.12 Addendums: Should an addition or correction become necessary after an RFP is issued, an addendum relating to the necessary information will be issued/posted to website. It is Proposer's responsibility to view the Public Purchase page regularly, or prior to submitting a response, to ensure that no addenda or additional information have been issued for the solicitation. The web address is https://www.publicpurchase.com.

3.13 Discounts for large one-time order deliveries, educational purposes, etc. The conditions for earning the discount may be indicated by the item being proposed or by submitting a separate page with the information. These discounts will not be considered in determining the low proposal but will be part of any contract issued.

3.14 Proposal Preparation Expense: Any expense related to the submission of a proposal is the sole responsibility of the Proposer. The District will not reimburse Proposers for any cost related to proposal preparation or submission.

3.15 All Proposers doing business with the District must have on file a Form W-9 Request for Taxpayer Identification Number and Certification.

3.16 All Proposers must provide a Felony Conviction Notification as required by Texas Education Code, Subchapter B, Section 44.034, Notification of Criminal History, Subsection (a). A copy of this form is included for your use as part of Contractor Certifications Form.

4. Submission of Proposal:

4.1 No Bids: To remain on Proposer's list, "NO BIDS" must be submitted by Proposers wishing to remain on the District's Centralized Master Contractors List (CMBL). Continued submittal of "NO BIDS" will result in Proposer being removed from the District's Centralized Master Contractors List (CMBL). Proposers not submitting proposals or submitting "no bids" may be removed without notice at any time and must reapply for inclusion in the District's Centralized Master Contractors List (CMBL). The District is not responsible for any errors occurring as a result of this procedure.

4.2 Public Proposal Opening: Proposals are opened in a manner to avoid disclosure of contents to competing Proposers and the contents are kept secret during the process of proposal negotiations. A copy of the proposal tabulation is usually available for public review after proposal awards. Tabulation information is available for download the day after award from our website at https://www.mcallenisd.org/apps/pages/index.jsp?uREC_ID=1097282&type=d&pREC_ID=1406975

4.3 Late Proposals: Late proposals will NOT be considered. The District will not be responsible for missent or misplaced proposals.

4.4 Amending/Withdrawing Proposal: A proposal cannot be altered or amended after the proposal opening date and time. Any alterations made before the opening date and time shall be initialed by Proposer or Proposer's authorized agent identified in the proposal. No proposal can be withdrawn after the opening date and time without approval of District. All approvals shall be based upon an acceptable written reason for the action.

4.5 Proposal Package(s): The District encourages and prefers proposals submitted on District RFP form(s) electronically; however, DISTRICT will be accepting sealed packages on CD, USB, paper/hardcopy through mail or hand delivery. Each proposal must be placed in a separate submittal. Proposals must be submitted and time stamped at District no later than the date and time specified for the proposal opening. Only the completed W-9, Contractor Certifications Form, Form 1295, Conflict of Interest and those pages on which a Proposer is submitting a proposal need to be returned. Blank pages or pages with no proposal information should not be returned.

4.6 Price lists must be included in the RFP. Any terms and conditions in a price list will not be considered a part of a proposal unless specifically identified by Proposer and referenced in writing.

4.7 Proposals via the U. S. Postal Service are to be sent to the address shown below.

McAllen ISD
Attn: Purchasing Services RFP #
4309 Warrior Drive, Bldg. C.
McAllen, TX 78501

4.8 Confidential: Subject to the requirements of the Texas Open Records Act, if a company believes that a proposal is, or parts of a proposal are confidential, then the company must so specify. The company must stamp in bold letters the term "CONFIDENTIAL" on that part of the

proposal, which the company believes to be confidential. The awarded proposal may be considered public information even though parts are marked confidential.

4.9 Copyrighted proposals are unacceptable and will be disqualified as unresponsive.

5. Proposal Evaluation and Award:

5.1 Proposal Evaluation: The District reserves the right to award on the basis of a low line item, low total (group or groups) or in any other combination that will best serve the interests of the District. The lowest proposal will not necessarily be the awarded proposal. Proposals will be assessed not only in terms of the cost of the goods/equipment, but also in terms of responsiveness of the proposed goods/services to the District's needs and requirements. The District reserves the right to accept or reject all or any part of a proposal, waive minor technicalities and make an award in the best interest of the District.

5.2 A response to an RFP is an offer to contract with the District based upon the terms, conditions and specifications contained in the RFP.

5.3 Proposals do not become contracts until a Notice of Award (NOA) is issued.

5.4 The contract shall be governed, construed and interpreted under the laws of the state of Texas.

5.5 The District will not be bound by any communication with Proposers other than the RFP, these General Terms and Conditions, Specifications and Scope of Work, Specifications, any written addendum's issued by District, District Policies and Procedures, and State Law.

5.6 The District shall be sole judge of what constitutes the best interest of the District.

5.7 The District reserves the right to reject proposals requiring minimum orders.

5.8 Fees charged for shipping and handling will be considered in awarding proposals.

5.9 Evaluation Criteria: In determining to whom to award a contract, the District shall consider in accordance with the Texas Education Code, Subchapter B, Section 44.031(b) Purchasing Contracts, Subsection (b): (1) the purchase price; (2) the reputation of the vendor and of the vendor's goods or services; (3) the quality of the vendor's goods or services; (4) the extent to which the goods or services meet the District's needs; (5) the vendor's past relationship with the District; (6) the impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses; (7) the total long-term cost to the District to acquire the vendor's goods or services;(8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:(A) has its principal place of business in this state; or (B) employs at least 500 persons in this state; and (9) any other relevant factor specifically listed in the request for bids or proposal.

5.10 Notice of Award (NOA): NOA/Tabulation information is available for download from our website at https://www.mcallenisd.org/apps/pages/index.jsp?uREC_ID=1097282&type=d&pREC_ID=1406975. Award information will be posted approximately ninety(90) days from proposal opening. Proposer must advise the District within 10 days from the date of award by the Board of Trustees of any errors requiring correction.

5.11 Qualified Ordering Entity: All campuses and departments are considered District users and qualified ordering entities. In some instances, other governmental entities may have Interlocal Contracts with the District. These entities may have access to the prices offered to District. Proposers are responsible for identifying and requesting information on these entities.

5.12 To expedite evaluation of the proposals, it is preferable that District forms be used.

5.13 Assignment: The awarded Proposer shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of District.

6. Insurance Requirements:

6.1 Statutory Workers' Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - $500,000.

6.2 Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job.

6.3 Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000; No deletions/exclusions from standard coverage form allowed without written consent of District. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

6.4 Successful Contractor will provide a certificate of insurance, in Acord 25 Form, to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason.

6.5 Each insurance policy to be furnished by successful bidder shall include, by endorsement to the policy, a statement that a notice shall be given to District by certified mail thirty (30) days prior to cancellation or upon any materials change in coverage.

6.6 Successful Contractor shall provide Certificates of Insurance evidencing the above- required insurance, prior to commencement of this contract and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. Said Notices and Certificates of Insurance shall be provided to Purchasing Services.

6.7 For non-subscribers that do not carry Workers' Compensation coverage, the District will, on a case-by-case basis, consider contractors who provide an Occupational Accident Policy, including Employers' Indemnity coverage with a $1,000,000 limit. However, the District reserves the right to require Workers' Compensation coverage if it feels it is in the best interest of the District to do so.

7. Price Changes: During the life of a contract only industry-wide published price changes as reflected in a manufacturer's printed price list, published documentation, or other approved method in an RFP may be submitted to the District for price adjustment consideration.

7.1 Procedures to Follow:

7.1.1 Firm Bids: No price increases allowed unless approved by DISTRICT in accordance with Section 7.2.

7.1.2 Catalog Bids: Submit a copy of the new manufacturer's price/cost list. Proposer shall compute new unit prices at the same percentage as reflected in the original proposal (See Sec. II. B. for formula). Prices will be verified for accuracy.

7.1.3 Requirement Contracts: No price increases allowed unless approved by DISTRICT in accordance with Section 7.2.

7.2 Acceptance of Price Increases: The District will accept or reject increases within seven (7) working days after receipt of a properly submitted request. If a properly submitted increase is rejected, Proposer may cancel such items from the contract by giving the District written notice. Cancellation will not go into effect for thirty (30) working days after receipt of the written request. Old prices must be honored on orders dated up to the official date of cancellation.

7.3 Price Decreases: Proposers are required to implement immediately any price decreases, roll backs, etc. that may become available. The District must be notified in writing of any decreases for file updating purposes and notice to contract users.

8. Administrative Procedure for Bid/Proposal Complaints: Members of the public having complaints regarding the District's purchasing procedures or operations may present their complaints or concerns to the District following this procedure. Please contact Purchasing Services for a copy of the

procedures at (956) 632-3241.

9. Invoicing:

9.1 Original invoices must be submitted in duplicate to the Accounting Department in compliance with the following procedure: INVOICES shall show purchase order number, copy of signed delivery ticket and proposal name and shall be mailed directly to:

McAllen Independent School District
ATTN: Director of Accounting
2000 North 23 Street
McAllen, TX 78501

9.2 The invoice must show name of Proposer exactly as shown on the purchase order and the correct "Remit to:" address.

9.3 Invoice must show name of receiving entity.

9.4 Invoice should include a description of each item. Items should be shown in numerical order and must correspond with the item numbers shown on the purchase order.

9.5 Quantity, unit and price of each item must be shown. All prices should be extended on the invoice.

9.6 Total all extensions on invoice.

9.7 Discount, if applicable, must be stated, extended and deducted to arrive at a NET TOTAL for invoice.

9.8 Shipment date of merchandise must be shown.

9.9 Date of purchase order must be shown.

10. Payment:

10.1 Payment normally will be made to Proposer within 30 days after receipt of a properly prepared original invoice or the receipt of and the acceptance of goods ordered, whichever is later.

10.2 Payments for merchandise purchased with District appropriated funds will be made through District approved and manually signed purchase orders issued by District's Purchasing Services. Payments by qualified ordering entities will be made through the District's Accounting System.

10.3 Partial payments are an exception, but may be made with the prior written approval of the District.

10.4 A purchase for goods or services cannot be made using District funds without prior approval from Purchasing Services in the form of an approved Purchase Order. All invoices shall reflect Purchase Order dates that are on or after Purchasing Services' final approval print date.

10.5 The District reserves the right to adjust any invoice which is in error due to incorrect quantity(s), printing errors or pricing of services or goods on this contract. Upon either written or verbal notification the provider will promptly adjust the error within thirty (30) days from the date the provider is notified of the error.

11. Cancellation:

11.1 Cancellation of Contract Orders: Orders are canceled in writing by the District. Orders may be canceled without the consent of Proposer for failure to meet contractual obligations. If cancellation is requested by District for some other reason, through no fault of Proposer, Proposer's permission to cancel is required. All correspondence from Proposer pertaining to the cancellation of an order is to be addressed to the District. In the event the awarded Proposer shall fail to perform, keep or observe any of the terms and conditions to be performed, kept or observed, District shall give the awarded Proposer written notice of such default; and in the event said default is not remedied to the satisfaction and approval of District within five (5) working days of receipt of such notice by the awarded Proposer, default will be declared and all the awarded Proposer's rights shall terminate.

11.2 Authorized Relief from Performance (Force Majeure): The District will grant relief, as necessary, from performance of the contract if Proposer is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Proposer. The burden of proof for the need of such relief rests with Proposer. To obtain release based on Force Majeure, Proposer must provide the District with sufficient documentation to show that suitable merchandise or service is unobtainable from any source.

11.3 Termination/Cancellation of Contract: The District reserves the right to cancel entire contract or any portion of a contract with any vendor that fails to perform in accordance with contract terms and conditions. The District and Proposer each shall have the right to terminate Contract without cause on thirty (30) days written notice to the other. The Contract will be monitored for acceptable services rendered throughout the contract period. The District will have the option to cancel the Contract within thirty (30) days from notification. In the event of any actual contract termination/cancellation, District will not be held responsible for loss of business or any termination expenses incurred by the vendor.

11.4 Non-Appropriation of Funds – The District intends to remit to the Contractor all payments for the full term if funds are legally available. In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the Payments for the services are due under any Agreement as a result of this RFP, the District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify the Contractor and any assignee of such occurrence. The Agreement(s) shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the Payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under the Agreement(s) relating to, accruing or arising prior to such termination. In the event of such termination, Contractor, at their expense, shall retrieve the equipment, effective on the date of such termination.

11.5 Termination for Default: District reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of District in the event of breach or default of this contract. District reserves the right to terminate the contract immediately in the event the awarded Proposer fails to:

11.5.1 Meet schedules;

11.5.2 defaults in the payment of any fees;

11.5.3 otherwise perform in accordance with these specifications.

11.6 Breach of contract or default authorizes District to exercise any or all of the following rights:

11.6.1 District may take possession of the assigned premises and any fees accrued or becoming due to date;

11.6.2 District may take possession of all goods, fixtures and materials of awarded Proposer therein and may foreclose its lien against such personal property, applying the proceeds toward fees due or thereinafter becoming due.

11.6.3 District reserves the right to award canceled contract to next lowest and best Proposer as it deems to be in the best interest of District. In such event, the District shall charge the canceled Proposer the difference for any additional cost of such proposal item(s) from the next lowest and best Proposer.

12 Other Provisions:

12.1 Texas state law requires that a purchasing preference be given to any product made from recycled material if the product meets written specifications as to quality and quantity. If a product proposal on this solicitation contains recycled material, please identify the item number and report the percent of all recycled material in the product and the percent of post-consumer material used in the product. "Post-consumer" means material that has been recycled after sale to a consumer as opposed to reuse of manufacturing waste material prior to sale. In addition, identify any products that meet the criteria of "Environmentally Sensitive." Information Request: Please send information on any products not listed in this contract that are related and available through your company which contain recycled material along with the percent of post- and pre- consumer content to:

McAllen Independent School District
ATTN: Purchasing Services
4309 Warrior Drive, Bldg. C.
McAllen, TX 78501-7734

12.1.1 When proposing, please consider the following:

12.1.2 Packing & Packaging: Use of the minimum amount of packing and packaging material consistent with assuring no damage to product in transit. The use of recyclable and recycled material content packing and packaging material is preferred.

12.1.3 New or Un-used: The terms shall not be interpreted to exclude the use of recycled content materials in products supplied. Nothing in a solicitation shall be construed to preclude the use of recycled content materials in a product regardless of any referenced specifications such as ANSI, ASTM, or Federal specifications so long as the material meets the performance requirements of such specifications and all required laws and regulations.

12.1.4 Material Safety Data Sheets: A Proposer must provide, at no cost, at least one copy of any applicable Manufacturer's Material Safety Data Sheet(s) (MSDS) with each shipment during the term of the contract. If OSHA or Federal or State laws provide for additional requirements, those requirements are in addition to the MSDS requirement. OSHA: All items must meet all applicable OSHA standards and regulations and all electrical items must bear the appropriate listing from UL, FMRC or NEMA.

12.1.5 Asbestos Management Plan: All proposers are required to review the Asbestos Management Plan for all District-owned facilities prior to performing any work or services at District-owned facilities. Asbestos Management Plans may be reviewed at each school site or at the Facilities Maintenance and Operations Department.

12.1.6 AHERA: All work must be in compliance with AHERA.

12.1.7 All contracts awarded in excess of $10,000 by school districts and their contractors or sub-grantees shall contain a provision requiring compliance with executive order 11246, entitled "Equal employment Opportunity", as amended by executive order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

12.1.8 All contracts and sub-grants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USD 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). This Act provides that each contractor or sub-grantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation, to which he is otherwise entitled. School districts shall report all suspected or reported violations to TEA.

12.1.9 All contracts awarded by school districts and sub-grantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of eight hours and a standard workweek of 40 hours. Work in excess of the eight hours per day or 40 hours per week shall be compensated at a rate of not less than 1 1/2 times the basic rate of pay. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor.

12.1.10 Contracts, subcontracts, and sub-grants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non- exempt federal contracts, grants, or loans of facilities included on the EPA list of violating facilities. The provision shall require reporting of violations to the Texas Education Agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

12.1.11 Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

12.1.12 Advertisement: Proposers are prohibited from using contract award information, sales values/ volumes and/or District customers in sales brochures or other promotions, including press releases.

12.2 Services/items supplied under this contract shall be subject to District's approval. Items found defective or not meeting specifications shall be picked up and replaced by the awarded Proposer at the next service date at no expense to District. If item is not picked up within one (1) week after notification, the item will become a donation to District for disposition.

13 Contract Provisions for contracts under Federal Awards – By submission of this proposal, Proposer agrees to comply with the following provisions.

13.1 Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where proposers violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

13.2 All contracts in excess of $10,000 must address termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.

13.3 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

13.4 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as

supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The entity must report all suspected or reported violations to the Federal awarding agency.

13.5 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

13.6 Rights to Inventions Made Under a Grants Contract or Cooperative Contract. If the Federal award meets the definition of "funding contract" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding contract," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," and any implementing regulations issued by the awarding agency.

13.7 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

13.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Proposers that apply or submit a proposal for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

13.9 An entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Any questions regarding this RFP must be submitted through the "questions" tab located within the solicitation on the Public Purchase website https://www.publicpurchase.com/gems/login/login.

SECTION B
SPECIFICATIONS AND SCOPE OF WORK

1.0 BACKGROUND

McAllen Independent School District (the "District") is a multicultural community of over 22,000 students. The District's vision 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. The District consists of nineteen (19) elementary schools, six (6) middle schools, three (3) traditional high schools, and two (2) non-traditional high schools.

Officers of the District are:

Debbie Crane-Aliseda, Trustee
Conrado Alvarado, Trustee
Lawrence Esparza, Trustee
Tony Forina, Trustee
Sam Saldivar, Jr., Trustee
Marco Suarez, Trustee
Daniel D. Vela, Trustee
Dr. Jose A. Gonzalez, Superintendent

2.0 INTENT

It is the intent of the District, through this Request for Proposal ("RFP"), is to select respondent(s) offering the best value for the purchase of pharmaceuticals.

3.0 REQUIREMENTS

The Specifications and Scope of Work ("SOW") will take precedence over the General Terms and Conditions when they are in conflict. Please read the General Terms and Conditions and the following information carefully. Any exceptions to these General Terms and Conditions and SOW may be cause for a Respondent to be disqualified.

4.0 TERM AND TERMINATION OF AGREEMENT

The period of the contract resulting from this RFP will be for a term of three (3) years at a fixed rate.

4.1 Absent a fixed three (3) year term rate agreement, the District **will accept** a term agreement for one (1) year with the option to renew for up to two (2) additional, one (1) year terms, subject to favorable renewal rates and terms at the expiration of each twelve (12) month term.

4.2 **Termination without Cause**. District shall have the right to terminate this contract ("Contract") without cause on thirty (30) days written notice to the Respondent.

4.3 **Termination with Cause.**

4.3.1 **Termination by District.** District may terminate this Contract immediately upon the occurrence of any of the following events:

4.3.1.1 Any conduct of the Respondent, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

4.3.1.2 Failure to provide evidence of liability insurance, as required.

4.3.1.3 Failure of Respondent to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

4.3.1.4 In addition, if the Respondent commits a material breach of any of the terms of this Contract, other than those listed in subsections 4.2.1.1 through 4.2.1.3 above, District may terminate this Contract upon no less than thirty (30) days written notice.

4.4 Respondent shall not be entitled to lost profits or any further compensation not earned prior to the time of cancellation.

5.0 PRICING, INVOICING AND PAYMENT

The pricing program offered through this RFP must remain firm for a period of a one (1) year term from the date of award by the District Board of Trustees. Price decreases and/or discount percentage in favor of the District are acceptable at any time throughout the term of the contract. In case of a price increase required due to market shortage or market change, documentation must be submitted for approval to Alejandra Gonzalez, Director of Purchasing Services at alejandra.gonzalez@mcallenisd.net.

6.0 EVALUATION CRITERIA

In determining who will be awarded, the District shall consider:

6.1 the purchase price;
6.2 the reputation of the vendor and of the vendor's goods or services;
6.3 the quality of the vendor's goods or services;
6.4 the extent to which the goods or services meet the district's needs;
6.5 the vendor's past relationship with the district;
6.6 the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses (in accordance with 2 CFR 200.320);
6.7 the total long-term cost to the District to acquire the vendor's goods or service;
6.8 for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
  6.8.1 has its principal place of business in this state; or
  6.8.2 employs at least 500 persons in this state; and
6.9 any other relevant factor specifically listed in the request for bids or proposals.

7.0 EVALUATION COMMITTEE.

The evaluation committee, which will be comprised of Andres Silva, Director for Employee Benefits, Safety & Risk Management; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Coordinator of Purchasing Services; and Liz Montes, Senior Buyer, will evaluate the RFP and recommend the successful vendor(s). The evaluation committee may consult with an outside consultant on submittals.

8.0 COMMUNICATION WITH DISTRICT PERSONNEL

Respondent submitting a proposal shall not discuss this RFP with employees of District or members of the Board of Trustees. Communication includes, but is not limited to, unsolicited literature, email, faxes or phone calls related to any aspect of this RFP. If discussion is necessary, you will be notified in writing. Failure to abide by this requirement will result in automatic disqualification at the discretion of the District. All questions must be posted on Public Purchase (www.publicpurchase.com).

9.0 SCOPE OF WORK

9.1 Awarded Respondent shall facilitate an international provider network to supply pharmaceutical products to the District's employees and/or eligible dependents (the "Members") that are part of the voluntary program.

9.2 Evidence of authorized Member eligibility will include a drug discount card and/or evidence of authorized eligibility, issued directly by the District or by the District's third party pharmacy benefits manager, Matrix Quality Care dba Araya.

9.3 Awarded Respondent shall develop a revolving formulary of various pharmaceuticals, as requested by the District that provide the most competitive pricing for the Members.

9.4 Pharmaceuticals shall follow current Food and Drug Administration ("FDA") regulations.

9.5 Respondent shall provide a complete list of countries with participating pharmacies with their submittal.

9.6 Awarded Respondent shall arrange for the supply of those pharmaceuticals to the Members with a valid prescription from their United States ("U.S.") attending physician.

9.7 Awarded Respondent shall provide pharmaceuticals that meet quality assurance standards. The District's preferred quality assurance standards are outlined in Section E "MINIMUM QUALITY ASSURANCE STANDARDS."

9.8 The pharmaceuticals requested under the RFP shall be limited to the following medications initially but may be subject to change based on plan utilization, cost shifts in the market, dosage changes, etc.:

- **9.8.1** Humira Pen Inj. 40 MG/0.8
- **9.8.2** Trulicity Inj. 1.5/0.5
- **9.8.3** Farxiga Tab 10 MG
- **9.8.4** Januvia Tab 100 MG
- **9.8.5** Copaxone Inj. 40 MG/ML
- **9.8.6** Enbrel Sure Click Inj. 50 MG/ML
- **9.8.7** Gilenya Cap 0.5 MG
- **9.8.8** Jardiance Tab 25 MG
- **9.8.9** Ozempic Inj. 2/1.5 ML
- **9.8.10** Ibrance Cap 125 MG

9.9 Respondent shall provide a sample of their standard monthly reporting package with their submittal.

9.10 Respondent shall provide a copy of audited financial statement for the preceding fiscal year with their submittal.

9.11 Awarded Respondent shall provide a list of the fulfilled pharmaceuticals, including prices, in U.S. dollars, upon request.

9.12 Awarded Respondent shall make available, upon request, the listed price in U.S. dollars of any handling and/or delivery costs incurred by the pharmacy with respect to the shipment of the pharmaceuticals to the Members.

9.13 The listed pharmaceutical price in U.S. dollars shall only be increased or decreased to reflect the following:

- **9.13.1** global currency fluctuations; and
- **9.13.2** price increases or decreases by the manufacturer and/or distributor for the cost of the pharmaceutical(s).

9.14 Awarded Respondent shall prepare and submit to the District, on a monthly basis, a detailed invoice for all pharmaceuticals purchased by the Members.

9.15 The District's third party pharmacy benefits manager, Araya, will support the District's utilization of the international mail order pharmacy program by:

- **9.15.1** Providing monthly electronic file of Members.
- **9.15.2** Sending weekly letters, on the District's letterhead, to Members who have used a U.S. based pharmacy to obtain a medication that is available through Awarded Respondent, with information of how to access Awarded Respondent's services and what their copay savings will be.
- **9.15.3** Accepting a monthly file from Awarded Respondent of all medications filled for the Members419

9.15.4 Incorporate claims from Awarded Respondent into Araya's data warehouse to support clinical programs.

9.15.5 Include claims from Awarded Respondent in summary financial reports on a monthly basis.

9.16 Awarded Respondent shall provide proof of Insurance, as stated in Section 6 of the Terms & Conditions; in addition, certificate shall include insurance evidencing coverage of Cybersecurity Breach Insurance and Product Liability Insurance.

9.17 Respondent shall submit a copy of their service agreement. Awarded Respondent's service agreement may be considered at the District's discretion.

10.0 AWARD INFORMATION

Award information will be available for download from our website within ninety (90) days of opening:
(https://www.mcallenisd.org/apps/pages/index.jsp?uREC_ID=1097282&type=d&pREC_ID=1406975).

11.0 INSTRUCTIONS FOR SUBMITTING A PROPOSAL

All proposal responses must be submitted ONLY electronically through Public Purchase, https://www.publicpurchase.com. Mailed, hand-delivered, facsimile transmittals and/or emailed submittals **will not** be accepted.

Include ONLY the following forms with your submittal:

- ☐ Provide a complete list of countries with participating pharmacies. (Section 9.5)
- ☐ Provide a sample of standard monthly reporting package (Section 9.9)
- ☐ Provide a copy of audited financial statement for the preceding fiscal year (Section 9.10)
- ☐ Provide a copy of service agreement (Section 9.17)
- ☐ Section C - Deviation Form
- ☐ Section D - Completed International Pharmacy Benefit Management Questionnaire
- ☐ Section F - W-9 Form
- ☐ Section G- Conflict of Interest Form
- ☐ Section H - Contractor's Certification Form
- ☐ Proof of Insurance (Accord)
- ☐ HB 1295 Form– **must be completed online**
  (http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

The District encourages all Respondents to submit information only on forms provided through this RFP. Failure to submit the forms/information listed above may be cause for disqualification of proposal. Do not include unsolicited information such as pamphlets, company form letters, etc. with your proposal.

SECTION C
DEVIATION/COMPLIANCE FORM

DEVIATION/COMPLIANCE FORM

An authorized company representative must sign this form to indicate compliance with the Scope of Work, Award/Evaluation of Proposals, Certifications, Shipping and Delivery, Terms and Conditions, and all other information contained in this solicitation. All deviations shall be listed on this page, with complete detailed conditions and information included or attached. The District will consider any deviations in its award decisions, and the District reserves the right to accept or reject any response based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this form, the respondent assures the District of their full compliance with the Scope of Work, Award/Evaluation of Proposals, Certifications, Shipping and Delivery, Terms and Conditions and any other information contained in this solicitation.

List deviations below (attach additional sheets, if needed):

_____

_____

_____

_____

_____

_____

_____
Company Name

_____
Address

_____
City, State, Zip

_____
Signature

_____
Email

_____
Phone # Fax#

SECTION D
QUESTIONNAIRE

RFP No. 2021-002 International Pharmacy Benefit Management Questionnaire

1. Organization submitting proposal:

   a. Name of Firm: _____

   b. Year Founded: _____

   c. Address: _____

   d. Contact Person: _____

   e. Contact Person's email: _____

   f. Contact Person's Phone Number: _____

2. Prescription Drug experience:

   a. Number of Texas School District Clients: _____

   b. Other: _____

3. Provide three (3) current client references of similar size:

Name of Client	Contact Person	Telephone Number	Number of Employees

The District respects the privacy of all respondent's carrier list, but we require the information for proper evaluation. Failure to provide carrier information may affect respondent in the evaluation process.

4. Services

   a. Will your proposal provide real time adjudication tracking software free of charge?

   ☐Yes ☐No If no, what is the cost? _____

   b. The District prefers a transparent pricing model. Is your model a transparent pricing model? ☐Yes ☐No
   If No, please explain service and pricing model:

_____

_____

_____

c. Will you agree that the District will not be required to pay any additional fees, costs, or expenses other than those expressly set forth in the proposal response? ☐Yes ☐No

Comments_____

d. Do you provide cool & cold chain medications? ☐Yes ☐No

Explain_____

_____

_____

_____

e. Will your Agreement allow for third party audits of all rights and obligations under the agreement? ☐Yes ☐No

Comments_____

f. Will the District retain the right to select the auditor at its discretion? ☐Yes ☐No

Comments_____

g. Has the business entity been a defendant in any lawsuit in any state or federal court during any of the preceding five (5) years? ☐Yes ☐No

If yes, identify each lawsuit by party, case number, court, subject matter, and disposition:

_____

_____

_____

h. Do you have any claims filed against your company which are unresolved and presently pending before any state administrative agency?
☐Yes ☐No

If yes, please provide a full description of the matter:

_____

_____

_____

_____

5. For what period of time are proposed costs guaranteed? _____

6. How is eligibility and reporting handled?

_____

_____

_____

7. Does the District retain any of the rebates collected?

☐Yes ☐No If yes, what percentage? _____

8. Is the District billed directly or through current pharmacy benefit manager?

_____

_____

_____

9. Are costs associated with service covered by Company, Member, or combination (shipping, handling, etc.)?

Comments

_____

_____

_____

10. Are there any administration fees? ☐Yes ☐No If yes, what are the costs? _____

Are the costs guaranteed for a three (3) year period? ☐Yes ☐No

Comments_____

11. Will you certify that you will not receive any compensation or revenue from any other third party related to the services provided under the agreement without the written consent of the Board of Trustees? ☐Yes ☐No

Comments_____

12. Other

    a. Describe Wire Transfer Payment procedures:

13. Financial Information:

    a. Has the business entity filed a voluntary or involuntary petition in bankruptcy, obtained an order for relief, or received a discharge on any debt under the U.S. Bankruptcy laws during any of the preceding seven (7) years? ☐Yes ☐No

       If yes, provide the name of the court and the case number(s):

    b. Has any owner, member, or partner of the business entity filed a petition in bankruptcy, obtained an order for relief, or received a discharge on any debt under the U.S. Bankruptcy laws during any of the preceding seven (7) years? ☐Yes ☐No
       If yes, provide the name of the court and the case number(s):

14. Do you meet the Minimum Quality Assurance Standards listed in the Statement of Work? ☐Yes ☐No
    If No, please provide any clarifications or deviations.

15. Pharmaceutical Costs

PRODUCT LIST	PRODUCT COST
Humira Pen Inj. 40 MG/0.8	
Trulicity Inj. 1.5/0.5	
Farxiga Tab 10 MG	
Januvia Tab 100 MG	
Copaxone Inj. 40 MG/ML	
Enbrel Sure Click Inj. 50 MG/ML	
Gilenya Cap 0.5 MG	
Jardiance Tab 25 MG	
Ozempic Inj. 2/1.5 ML	
Ibrance Cap 125 MG	

Company Name

Address

Type Signatory's Name and Title

Authorized Signature

SECTION E
MINIMUM QUALITY ASSURANCE STANDARDS

- Any and all prescription drug products shipped through Vendor supply chains meet or exceed all safety concerns that have been addressed by the Food and Drug Administration ("FDA").

- The Active Pharmaceutical Ingredients ("API") of any product being sourced internationally are comparable to the United States ("U.S.") FDA version. Vendor uses the following ways and means to demonstrate similarity:

    - Vendor warrants that it only ships drugs whose product monograph is substantially similar to the FDA approved version of that particular product monograph. The chemical name, chemical description, empirical formula, molecular weight, and the molecule of the active pharmaceutical ingredient, are identical but may be shown in different areas of the product monograph. Drug manufacturers are required by the regulatory bodies in each country to attest to the monographs annually and produce a monograph in every country that the particular drug is sold in.

    - Vendor only sources drug products from Good Manufacturing Process ("GMP") countries whose regulatory environments are comparable to, or more robust than, the U.S.

    - Vendor warrants that it only ships drug products when purity and dissolution tests confirm absolute similarity based on the standards set by the United States Pharmacopeia ("USP"). To determine whether a particular drug meets this expectation, Vendor shall contract with an approved Good Laboratory Practices ("GLP") certified prescription drug testing lab to test FDA approved drugs compared to their locally regulated and approved international counterparts.

    - Vendor affirms that all prescription medications shipped will only be manufactured in accordance with FDA manufacturing standards in facilities that maintain the designation, "FDA Approved Manufacturing Facility."

    - Vendor assures that prescriptions dispensed through Vendor and Vendor networks are labeled similarly to those dispensed in the US.

    - Vendor network is fully Health Insurance Portability and Accountability Act ("HIPAA") compliant.

    - Utilizing Drug Utilization Reviews ("DUR") at multiple points, a pharmacy administration management system and the dispensing pharmacist will red flag a contraindicated medication after reviewing a patient's drug history and current drug profile. Both the U.S. attending physician and the local dispensing pharmacist must complete a DUR process prior to prescribing or dispensing a drug to a patient.

- Multilingual phone support to eligible Members will be provided through a call center during U.S. business days and standard business hours, at a minimum.

- Members will be advised of potential prescription or non-prescription drug reactions, interactions, and adverse side effects or appropriate precautions, based on current information available to the dispensing pharmacist at the time the prescription is fulfilled. If available, a drug information sheet will be provided with every prescription fulfilled through the Vendor Network to the covered Members.

- Members and/or the U.S. attending physician will be contacted when a prescription item may be

unduly delayed. In the event a delay occurs, the employee could obtain a limited quantity short-fill prescription through a local pharmacy.

- Vendor will create and maintain full medication profiles for all Members.

- Vendor will conduct both retrospective and prospective DUR's including current non-prescription/over-the-counter ("OTC") medications and for herbal or nutraceutical type preparations, prior to dispensing the prescribed pharmaceutical medication.

- Vendor will ensure that all pharmaceuticals are maintained in accordance with appropriate temperature, light, and humidity standards, during warehousing, shipping, and storage, by our fully licensed regulated licensed pharmacy networks.

- Vendor will notify Members of any relevant prescription drug recalls or any regulatory alerts associated with any prescription drug fulfillments.

- Requirements for the fulfillment of pharmaceuticals will be anticipated on a best effort basis to secure adequate inventory of such pharmaceuticals for Member on a timely basis. Vendor will always utilize the most cost-effective and competitive shipping rates.

- Vendor participating pharmacy networks will always maintain fully secure supply chains, warehousing, and retail pharmacy facilities.

- Vendor will ensure that all legal, regulatory, and other relevant documentation, including customs declarations to allow for the personal importation of the pharmaceuticals by the Member in to the U.S. diligently prepared, stored, and forwarded with all fulfilled prescription drug products

- Vendor will maintain Member confidentiality, protect Member identity and safeguard Member participant specific personal health information in order to meet and/or exceed both domestic and international privacy legislation guidelines.

- Any access to a Member profile is limited to authorized personnel only including the pharmacies/pharmacists/call center personnel and other designated Vendor contractors, employees, the Member who owns the personal health information, and the U.S. attending physician.

SECTION F

W-9

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

► **Go to *www.irs.gov/FormW9* for instructions and the latest information.**

Give Form to the requester. Do not send to the IRS.

Print or type. See **Specific Instructions** on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ►

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN,* later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			–			–				

or

Employer identification number

		–							

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person** ► **Date** ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting,* later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.

2. The treaty article addressing the income.

3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,

2. You do not certify your TIN when required (see the instructions for Part II for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code,* later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships,* earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code,* later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over $600 required to be reported and direct sales over $5,000[1]	Generally, exempt payees 1 through 5[2]
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester,* later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at *www.SSA.gov*. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/Businesses* and clicking on Employer Identification Number (EIN) under Starting a Business. Go to *www.irs.gov/Forms* to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to *www.irs.gov/OrderForms* to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code,* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account[1]
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor[2]
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee[1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner[1]
6. Sole proprietorship or disregarded entity owned by an individual	The owner[3]
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	**Give name and EIN of:**
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity[4]
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

[4] List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships,* earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov.* You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at *spam@uce.gov* or report them at *www.ftc.gov/complaint.* You can contact the FTC at *www.ftc.gov/idtheft* or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see *www.IdentityTheft.gov* and Pub. 5027.

Visit *www.irs.gov/IdentityTheft* to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

SECTION G

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____

Signature of vendor doing business with the governmental entity Date

SECTION H

CERTIFICATION FORM

CONTRACTOR CERTIFICATION FORM
(Return signed form with your submittal)

1. Felony Conviction Notification

Texas Education Agency Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states, "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." This notice is not required of a publicly held corporation.
Initial where applicable.

☐ A. My company is a publicly held corporation; therefore, this reporting requirement is not applicable.

B. My company is not owned nor operated by anyone who has been convicted of a felony.

C. My company is owned and operated by the following individual(s) who has/have been convicted of a felony:
Name of Felon(s): _____

Details of Conviction(s): _____

2. Criminal History Record Information Review of Certain Contract Employees

By signing below, the Bidder agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. The undersigned Bidder, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. The Bidder agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. The Bidder further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.

☐ None of my employees and any of my subcontractors has or will have continuing duties related to the contracted services; and has or will have direct contact with students. I further certify that my company has taken precautions or imposed conditions to ensure that my employees and any subcontractor will not have continuing duties related to the contracted services; and will not have direct contact with students throughout the term of the Contract.

OR

☐ Some or all of my employees and/or my subcontractors will have continuing duties related to the contracted services; and will have direct contact with students. I further certify that:

1. I have obtained all required criminal history record information regarding all of my employees and/or my subcontractors. None of my employees and/or my subcontractors has any conviction or other criminal history information if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. **If available, attach a copy of your FAST Pass Receipt.**
2. If I receive information that any of my employees and/or subcontractors subsequently has a reported criminal history, I will immediately remove the covered employee from contract duties and notify the District in writing immediately.
3. I will provide the District with the names and any other requested information regarding any of my employees and/or subcontractors so the District may obtain criminal history record information if awarded a contract.
4. If the District objects to the assignment of any of my employees and/or subcontractors, I agree to discontinue using the individual to provide services to the District.

3. Debarment and Suspension (Executive Orders 12549 and 12689)

By signing below Contractor certifies that neither it nor its principals are currently listed on the government-wide exclusions in SAM as debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractor further agrees to immediately notify the District if he/she is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

4. Confidential/Copyrighted Information

By signing below, the Contractor agrees, if a bid is, or parts of bid is confidential, the Contractor has specified by stamping in bold letters the term **"CONFIDENTIAL"** on all or the confidential part of the bid. The bid may be considered public information even though all or parts are marked confidential. Furthermore, Contractor agrees a copyrighted bid is unacceptable and will be disqualified as unresponsive.

5. Declaration of Business Location - Texas Education Code 44.031(b)(8)

By signing below, Bidder certifies the Bidder's or the Bidder's ultimate parent company or majority owner:

☐ A. Has its principal place of business in the State of Texas; **OR** ☐ B. employs at least 500 persons in the State of Texas

☐ C. Principal place of business is not in the State of Texas: _____
(City, State)

6. Owner(s) Name of Business

By signing below, Bidder certifies the owner(s) name of the business submitting bid is/are (Please print name(s) below. If not applicable, please indicate N/A.)

_____ _____

_____ _____

_____ _____

7. Delinquent Taxpayers

In accordance with law, the District shall not enter into a contract or other transaction with a person indebted to the District, nor shall the District award a contract to or enter into a transaction with an apparent low bidder or successful proposer indebted to the District.

[ ] I am not a delinquent taxpayer to McAllen ISD

[ ] I am a delinquent taxpayer to McAllen ISD *(your bid may be disqualified if your debt is not cleared prior to award.)*

8. Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firm

Contractor certifies the Bidder's company is HUB certified with the State of Texas.

[ ] I am an Active certified HUB vendor. HUB expiration date: _____

[ ] Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms

[ ] I am neither.

9. Buy America Provisions

By signing below, Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

10. Entities That Boycott Israel:

If Bidder is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Bidder certifies that Bidder does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Bidder does not make that certification, Bidder must indicate that in its Response and state why the certification is not required.

11. Federally Funded Purchases

By signing below, Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases (see attached "Federally Funded Purchases" form.

I, the undersigned authorized agent for the company named below, certify that the information concerning Sections 1-10 listed above has been reviewed by me and the information furnished is true to the best of my knowledge. I further certify that I agree to comply with Sections 1-11 listed above.

COMPANY NAME: _____

AUTHORIZED AGENT'S NAME (PRINTED): _____

SIGNATURE OF COMPANY OFFICIAL: _____

Contract Provisions for contracts under Federal Awards – Contractor agrees to comply with the following provisions.

- Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts in excess of $10,000 must address termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.
- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The entity must report all suspected or reported violations to the Federal awarding agency.
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the

purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of $250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or submit an offer for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.
- A an entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- Buy American Provision

SECTION I DRAFT CONTRACT

MCALLEN INDEPENDENT SCHOOL DISTRICT
CONTRACT NO. XXXX-XXX (PROJECT NAME BE) through Request for Proposal No. XXXX-XXX

This contract ("Contract"), made and entered into effective by and between **McALLEN INDEPENDENT SCHOOL DISTRICT** (hereinafter referred to as "District") and (**name of company as listed on W-9)** a (state vendor is located) (type of business, corporation, llc, etc) (hereinafter referred to as "Contractor") as of the date of execution (the "Commencement Date") by the District as shown on the signatory page of this Contract.

WITNESSETH:

WHEREAS, District recognizes that the **DEPARTMENT** of District (the "Department") requires certain services ("Services") rendered by Contractor who has the training, experience, and qualifications necessary to provide the services;

WHEREAS, District requested proposals from vendors for Services, more particularly described on Exhibit A attached hereto ("District's Request for Proposal No. xxx-xxx");

WHEREAS, Contractor submitted a response to the District's proposal;

WHEREAS, District has determined that the proper, orderly and efficient delivery of quality Services for the District can be accomplished best by contracting with Contractor in accordance with the local, state and federal regulations for procurement;

WHEREAS, District has determined that for proper and efficient operation of the Department, several objectives must be met, including, among others, coordination of schedules and assignments, administrative ease and efficiency, consistency and uniformity in book and recordkeeping, and the delivery of quality Services;

WHEREAS, the Contractor is willing to accept the responsibility of providing the Services to the District in accordance with recognized standards, the Board Policies of District, applicable laws and regulations and the terms and conditions set forth in this Contract; and

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the provision of the Services by Contractor during the term of this Contract;

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. OBLIGATIONS OF THE CONTRACTOR

Contractor shall perform all of the work and provide all equipment, materials, and labor required in accordance with the terms and conditions of the Contract Documents, as hereinafter defined.

Contractor represents and warrants to District that Contractor possesses all of the licenses, permits, and expertise required to provide the equipment, materials, and labor and perform the services contemplated hereunder.

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Contractor warrants and represents that during the term of this Contract, Contractor shall maintain all such licenses and permits. Contractor warrants that the services rendered and equipment, materials, and labor furnished shall be in accordance with the terms of the Contract Documents.

The term Contract Documents as used herein shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract. The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

A. This Contract

B. Exhibit "A" – District's Request for Proposal No. No. xxx-xxx

C. Exhibit "B" – Vendor's Services, Products and Fees Pursuant to Request for Proposal No. No. xxx-xxx

D. Exhibit "C" – Certificate of Insurance

This Contract is entered into subject to the following conditions:

A. Contractor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees of District and /or the learning environment of students of District while performing its work in accordance with the Contract Documents.

B. Contractor assumes full responsibility and liability for all labor and materials furnished and activities conducted by Contractor pursuant to this Contract and any action or omission incident thereto.

2. INSURANCE COVERAGE

At all times during the term of this Contract, Contractor will, at Contractor's expense, carry and maintain the following insurance coverages with the minimum coverage amounts as follows:

A. Statutory Workers' Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - $500,000

B. Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate.

C. Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000. No deletions/exclusions from standard coverage form allowed without written consent of District. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

D. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job.

E. The Contractor will provide a certificate of insurance to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason. Such Certificate of insurance shall be attached to this Contract as Exhibit C.

3. TRANSFER, ASSIGNMENT, ETC.

Contractor agrees, for itself and on behalf of its successors, and any person or persons claiming under Contractor by virtue hereof, that this Contract and the rights, interests, and benefits hereunder cannot be assigned, transferred, pledged, or hypothecated in any way and shall not be subject to execution, attachment, or similar process. Any such attempt to do so, contrary to the terms hereof, shall be null and void and shall relieve the District of any and all obligations or liability hereunder.

4. ADJUDICATION

If any provision, paragraph, or subparagraph of this Contract is adjudged by any court of law to be void or unenforceable, in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of the Contract, including any other provision, paragraph, or subparagraph.

5. PROVISIONS, PARAGRAPHS

Each provision, paragraph, and subparagraph of this Contract is declared to be separable from every other provision, paragraph, and subparagraph and constitutes a separate and distinct covenant.

6. PAYMENT

As consideration for performing the services and supplying the equipment, materials and labor pursuant to the Contract Documents, District agrees to pay Contractor a cost consistent with the pricing agreed upon, a copy of which is attached hereto as Exhibit B and is incorporated herein for all purposes. The payment for services, materials, and labor shall be paid by District to Contractor as invoiced upon successful and satisfactory installation of equipment and materials pursuant to the Contract Documents upon verification by District's authorized representative of such invoice in compliance with the Contract Documents.

7. TAXES AND BENEFITS

Contractor expressly acknowledges that Contractor will be acting as an independent contractor for all purposes, including payment of social security, withholding taxes, and all other federal, state, and local taxes. Contractor, as independent contractor, shall be solely responsible to its employees, agents, third party contractors any other person

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supplying labor or material for Contractor in performing any portion of this Contract or any action or omission incident thereto. Contractor also agrees to pay for and provide workers compensation insurance covering all employees working for Contractor in performing labor pursuant to this Contract or any activity incident thereto.

8. INCURRING FINANCIAL OBLIGATION

The Contractor will incur no financial obligation on behalf of District without prior written approval of the Superintendent of District. The Contractor will be responsible for all personal and professional expenses.

9. ACCESS TO BOOKS AND RECORDS

Contractor recognizes that District is a participant in governmental payment programs. In connection with such programs, the Contractor agrees to cooperate with District and provide to District reasonable assistance in District's efforts to meet the requirements for participation in and payment under such programs.

10. NON-DISCRIMINATION

Contractor will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing services under this Contract or in the selection of associates, employees, or independent contractors.

11. HOLD HARMLESS

Contractor agrees to hold harmless and indemnify District from any liability and/or damages, which may directly or indirectly arise from or occur in connection with Contractor's performance under this Contract or any action, activity or omission incident thereto. Such indemnification shall include but not be limited to all District's attorneys' fees and costs incurred in defending or responding to any action brought or threatened against District for any action or omission arising from or incident to Contractor's performance under this Contract.

12. TERM AND TERMINATION OF CONTRACT

Term. The term of this Contract shall commence on the Commencement Date and remain effective through {insert end date} (Federal: a term of one (1) year, with the option to renew for three (3) additional one (1) year terms). All services must be completed during the term of the Contract.

A. **Termination without Cause**. District shall have the right to terminate this Contract without cause on thirty (30) days written notice to the Contractor.

B. Termination with Cause.

a. Termination by District. District may terminate this Contract immediately upon the occurrence of any of the following events:

i. Any conduct of the Contractor, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

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ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 2 hereof.

iii. Failure of Contractor to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

iv. In addition, if the Contractor commits a material breach of any of the terms of this Contract, other than those listed in subsections (i) through (iii) above, District may terminate this Contract upon no less than thirty (30) days written notice.

b. **Termination by Contractor.** In the event District breaches any material term of this Contract, Contractor may terminate this Contract upon no less than fifteen (15) days written notice.

c. **Non-Interference.** Following the expiration of this Contract or its termination for any reason, Contractor agrees to do nothing that may interfere with any contract of District with any other individual or entity for the provision of the services herein.

13. NOTICES

All notices provided to be given under this Contract shall be given in writing and will be deemed delivered when deposited in the United States Postal Service by certified or registered mail, addressed to the proper party, at the following addresses:

If to District: McAllen Independent School District
Attn: Jose A. Gonzalez, Superintendent
2000 N. 23rd Street
McAllen, Texas 78501

If to Contractor: COMPANY NAME
Attn:
Street:
City:

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this section.

14. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS CONTRACT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THIS AGREEMENT ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS.

15. NO IMPLIED WAIVER

No waiver or modification of the Contract Documents shall be valid unless it is in writing and signed by the District and Contractor.

16. SEVERABILITY

The invalidity or unenforceability of any provisions of this Contract will not affect the validity or enforceability of any other provision.

17. ASSIGNABILITY

The right and obligations of District hereunder shall inure to the benefit of and be binding upon the successors and assigns of District. The Contractor may not assign Contractor's rights or obligations under this Contract without District's written consent. Any assignment in violation of this provision shall give District the right to terminate this Contract immediately, upon written notice to the Contractor.

18. AMENDMENTS

All provisions of the Contract Documents shall be strictly complied with and performed by Contractor; and no amendment to this Contract shall be made except upon the written agreement by the parties. No amendment shall be construed to release either party from any obligation, representation, and/or warranty of the Contract Documents except as specifically provided for in such amendment.

19. ENTIRE CONTRACT

This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof. This Contract supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the subject matter the Contract.

20. INTERPRETATION

The defined terms used herein are for convenience only and do not limit the contents of this Contract.

21. VARIATIONS OF PROUNOUNS

All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

22. AUTHORIZATION FOR CONTRACT

The execution and performance of this Contract by District and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes the valid and enforceable obligations of Contractor and District in accordance with its terms.

23. IMMUNITIES

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Nothing in this Contract is intended to and District does not hereby waive, release or relinquish any right to assert any of the defenses District enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to District as to any claim or action of any person, entity, or individual against District.

24. NON-APPROPRIATION OF FUNDS.

In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the payments for the services are due under this Contract, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Contractor and any assignee of such occurrence. This Contract shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under this Contract relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Contractor or its assignee stop the services on the date of such termination.

25. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA).

Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent except as provided in the Family Educational Rights and Privacy Act (FERPA).

26. CRIMINAL HISTORY INFORMATION.

Pursuant to Texas Education Code Section 22.0834, Contractor shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of the Contractor if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the contracted services herein, and the duties are or will be performed on school property or at another location where students are regularly present. Contractor shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process was followed.

Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District's property or other location where students are regularly present, District shall be the final decider of what constitutes a "location where students are regularly present". Contractor's violation of this section shall constitute a material breach of contract. If the Contractor is the person, owner, or operator of the business entity, that individual may

not self-certify regarding the criminal history record information and its review, and must submit original evidence of compliance acceptable to District, with this Contract.

27. ENTITIES THAT BOYCOTT ISRAEL

If Contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Contractor does not make that certification, Contractor must indicate that in its Response and state why the certification is not required.

28. Sec. 2252.152 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.

A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

Sec. 2252.153. **LISTED COMPANIES.** The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

Sec. 2252.154. **EXCEPTION.** Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3. This Act takes effect September 1, 2017.

29. BREACH OF CONTRACT AND FEES

If either party hereto shall breach any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including attorney's fees, incurred by such party in enforcing the terms of this Contract.

30. FURTHER DOCUMENTS

The parties hereto covenant and agree that they will execute such other and future instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

31. BINDING NATURE

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This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

32. CONTRACT TERMS CONTROL

The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

IN WITNESS WHEREOF, the execution and performance of this Contract by each of the parties hereto have been duly authorized by all necessary laws, resolutions, ordinances, or governing body action, and this Contract constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms.

EXECUTED on _____
Date

DISTRICT:

McAllen Independent School District
By:_____
Jose A. Gonzalez, Superintendent

Vendor
By:_____
Name:_____
Title:_____

Approved as to form:
Atlas Hall & Rodriguez, LLP
by: _____
Stephen Crain

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MCALLEN
INDEPENDENT SCHOOL DISTRICT

ALEJANDRA GONZALEZ
Director of Purchasing Services

McAllen Independent School District is providing the following clarification(s) and/or modification(s) to the referenced project. This information is to be considered a part of the solicitation documents. Respondents are further instructed to acknowledge receipt of all addenda by affixing required signature where indicated, and submit with their Proposal response.

June 17, 2020

RE: ADDENDUM NO. 1

Please note the following changes for RFP No. 2021-002 – International Pharmacy:

2.0 INTENT

It is the intent of the District, through this Request for Proposal ("RFP"), is to select respondent(s) offering the best value for the purchase of pharmaceuticals through an International Pharmacy vendor. The District currently contracts for traditional Pharmacy Benefit Management and Administration services with a third party vendor and is **not** seeking proposals for that component of the Pharmacy benefit program. This RFP is for the **International component of the benefit program only**.

The following is plan utilization of targeted drugs.

Label name	Claims	Average Cost per script
Humira Pen Inj 40 MG/0.8	52	$4,984
Trulicity Inj 1.5/0.5	209	$1,418
Farxiga Tab 10 MG	100	$929
Januvia Tab 100 MG	97	$940
Copaxone Inj 40 MG/ML	17	$5,271
Enbrel Sure Click Inj 50 MG/ML	28	$4,954
Gilenya Cap 0.5 MG	12	$7,932
Jardiance Tab 25 MG	63	$1,063
Ozempic Inj 2/1.5 ML	110	$897
Ibrance Cap 125 MG	11	$11,435
Compared to Data from 11/1/18 - 10/31/19		

Addendum #1 Acknowledged By:

Authorized Signature _____ Company Name _____

Type/Print Name _____

Exhibit “B” – Vendor’s Services, Products and Fees Pursuant to

Request for Proposal No. 2021-002

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MEMORANDUM OF UNDERSTANDING
BETWEEN ELECTRX AND HEALTH SOLUTIONS LLC AND MCALLEN INDEPENDENT SCHOOL DISTRICT

1) **Parties.** This Memorandum of Understanding (hereinafter referred to as "MOU") dated …2020**,**

Between:

ELECTRX AND HEALTH SOLUTIONS LLC

(Hereinafter referred to as "ElectRx")

whose registered address is:

32232 Crossbow
Beverly Hills, Michigan 48025
United States of America

-and-

MCALLEN INDEPENDENT SCHOOL DISTRICT

(Hereinafter referred to as "District")

whose registered address is:

2000 N. 23rd St.
Mcallen, TX 78501
United States of America

2) **Purpose of the MOU**. The purpose of this MOU is to establish the terms and conditions under which employee members of District and/or their eligible dependents, and various other groups, as defined in the articles of the District Healthcare Employee Benefit Plan(s) can participate in a voluntary program that enables their acquisition of certain pharmaceutical products for personal consumption from both the United States of America and International Mail Order Pharmacies, at the lowest net cost.

3) **Term of the MOU**. This MOU shall begin on **……2020** and terminate at the end of the business day on **……. 2021**. However, this MOU may be terminated, for any reason or cause, by either party

upon 30-days written notice, which notice shall be delivered by certified mail to the addresses listed below.

4) **Responsibilities of ElectRx.** ElectRx has facilitated the ElectRx Network to provide Member Participants with the opportunity to acquire pharmaceutical products, at the lowest net cost. Employee members of District and their eligible dependents, who are residents of the US, can voluntarily become Member Participants in the ElectRx Network, and obtain prescription drug products at the lowest net cost. Member Participant in this context will denote a person who is a cardholder entitled to a drug discount card or other evidence of authorised eligibility and/or participation, issued directly by District or by a third party, having a contractual right from District to issue such card or grant such authorised participation. ElectRx, as an independent contractor, shall, subject to the provisions of this Understanding, make its reasonable best efforts to:

   a. Develop with District a revolving formulary of various pharmaceuticals that will provide the most competitive pricing and that is mutually agreeable to District and ElectRx.

   b. Arrange for the supply of those pharmaceuticals to District Member Participants with a valid prescription from their US Attending Physician.

   c. Provide quality assurance as outlined in **Exhibit A: ElectRx Statement of Quality Assurance for District Healthcare Benefit Plan.**

   d. The pharmaceuticals provided under this MOU will be limited by the excluded medications detailed in **Exhibit B: Excluded Medications ElectRx/District Healthcare Benefit Plan.**

   Each supply of Pharmaceuticals through the ElectRx Network to Member Participants shall be a separate and distinct **implied** tripartite contract between the dispensing pharmacy, the duly licensed pharmacist, and the Member Participant.

   The listed prices in US Dollars of the fulfilled pharmaceuticals, which includes shipping costs, will always be available upon request. With respect to high cost coolers, a quality control requirement for preserving cold chain custody during the shipment of certain specialty drug products to plan members, a pre-paid shipping label is included to facilitate the mandatory return of the cooler by the plan member to the dispensing pharmacy.

   The listed pharmaceutical price in US Dollars including shipping costs may occasionally be increased or decreased to reflect the following:

   a. global currency fluctuations

   b. price increases or decreases by the manufacturer and/or distributor for the cost of the pharmaceutical(s)

   c. shipping cost increase or decrease

5) **Responsibilities of District**

   District agrees to offer these Member Participants and their eligible dependents, who are residents of the USA, the opportunity to voluntarily participate in the ElectRx Network and afford them the

opportunity of acquiring certain prescription drugs at the true lowest net cost. District, when requested by ElectRx, agrees to provide confirmation of authorized eligibility and / or participation for any Member Participant seeking to fulfill prescription drugs through the ElectRx Network. Twice a month Elect Rx shall prepare and submit to District two detailed invoices for all pharmaceuticals purchased by District Member Participants during the periods of the first through the fifteenth and the sixteenth through the end of the previous month. Upon execution of this Agreement, and for its entire duration, District warrants that on receipt of these detailed invoices, District shall remit payment in full by a duly authorized Bank Wire Transfer, or Direct Debit, also referred to as ACH, eCheck, or Online Check, in favor of Elect Rx within fifteen (15) calendar days. It is the unequivocal intention of the parties that for the entire term of this MOU, full payment of each undisputed detailed invoice will be remitted within this fifteen (15) calendar day period

6) **General Provisions**

A. Amendments. Either party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all parties to this MOU.

B. Applicable Law. The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of Texas. The courts of the State of Texas shall have jurisdiction over any action arising out of this MOU and over the parties.

C. Entirety of Agreement. This MOU, consisting of five pages, represents the entire and integrated understandings between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

D. Severability. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and party may renegotiate the terms affected by the severance**.**

E. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this MOU shall not be construed.so as to create such a status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU and shall have effect and be applied solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU**.**

F. Indemnity. Vendor shall indemnify District and its officers, directors, employees and volunteers against, and hold District and its officers, directors, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which or its officers, directors, employees or volunteers may sustain, or which may be asserted against District or its officers, directors, employees or volunteers, arising out of the activities contemplated by this

Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Vendor, its Vendors, and employees, except in the event of District officers, directors, employees, volunteers, or any of their agents' negligence, gross negligence, and wilful misconduct.

Liability Insurance. General Liability, Errors and Omissions, Cyber Breach, and Occupational Accident Policy insurance shall be provided and maintained by ElectRx with District named as a co-insured entity on the policy. The coverages under each policy are as outlined in the respective policy documents attached below.

7) **Notices.** Any notices, consents, approvals, statements, authorizations, documents, or other communications (collectively Notices) required or permitted to be given hereunder shall be in writing, and shall be delivered personally (which shall include confirmed or receipted delivery by a courier) or mailed by registered mail, postage prepaid, to the parties at their respective addresses set forth hereunder, namely:

To ElectRx and Health Solutions LLC at:

32232 Crossbow
Beverly Hills, Michigan 48025
United States of America

And with a copy to:

Christopher R. Martella Esq.
Kemp Klein Law Firm
201 W. Big Beaver, Suite 600
Troy, MI 48084
United States of America

To MCALLEN INDEPENDENT SCHOOL DISTRICT at:

Jose A Gonzalez, Superintendent
2000 N. 23rd St.
Mcallen, TX 78501
United States of America

And with a copy to:

Or at any such other address or addresses as may be given by any of them to the other in writing from time to time. Such notices if mailed, shall be deemed to have been given on the fourth business day (excluding Saturday and Sundays) following such mailing or if delivered personally shall be deemed to have been given on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery; provided that if such notice shall have been mailed and if regular mail service shall be interrupted by strike or other irregularity before the deemed receipt of such notice as aforesaid, then such notice shall not be effective unless delivered

8) **Contract Documents**. The contract documents that comprise the entire MOU between District and ElectRx are made a part hereof and are listed as exhibits. There are no contract documents other than those listed below. If there is a conflict in terms between this MOU and the contract documents, then the terms of this MOU will control over the terms of the contract documents listed below. If there is a conflict within the exhibits regarding scope of service, the order of precedence is as follows: (1) Exhibit A, then (2) Exhibit B.

   Exhibit A: ElectRx Statement of Quality Assurance for District Benefit Plan (A-1 through A-3)
   Exhibit B: Excluded Medications ElectRx/District Benefit Plan (B-1)

9) **Signatures.** IN WITNESS WHEREOF, the parties to this MOU, through their duly authorized representatives, have executed this MOU on the days and date set out below, and certified they have read understood and agreed to the terms and conditions of this MOU as set forth herein.

ATTEST:

Approved as to form and legality:

_____

MCALLEN INDEPENDENT SCHOOL DISTRICT:

By: _____

Name:_____

Approved as to form and legality:

_____

ELECTRX AND HEALTH SOLUTIONS LLC:

By: _____

Name:_ _____

Exhibit A: ElectRx Statement of Quality Assurance for McAllen Independent School District Healthcare Benefit Plan.

ElectRx provides the following assurances:

- ElectRx specializes in providing the highest quality prescription drug products to US based consumers with a valid prescription from their US Attending Physician at the true lowest net cost,
- Any and all prescription drug products shipped through ElectRx supply chains meet or exceed all safety concerns that have been addressed by the Food and Drug Administration (FDA).

- ElectRx professional services and fulfillments are fully insured.

- ElectRx maintains a laser-like focus on process and safety standards.

- The Active Pharmaceutical Ingredients (API) of any product being sourced internationally are comparable to the US FDA version. ElectRx uses the following ways and means to demonstrate similarity:

    - ElectRx warrants that we only ship drugs whose product monograph is substantially similar to the FDA approved version of that particular product monograph. The chemical name, chemical description, empirical formula, molecular weight, and the molecule of the active pharmaceutical ingredient, are identical but may be shown in different areas of the product monograph. Drug manufacturers are required by the regulatory bodies in each country to attest to the monographs annually and produce a monograph in every country that the particular drug is sold in.

    - ElectRx only sources drug products from GMP (Good Manufacturing Process) countries whose regulatory environments are comparable to, or more robust than, the United States.

    - By only providing prescription drugs from GMP Tier 1 countries, ElectRx affirms that all prescription medications shipped will only be manufactured in accordance with FDA manufacturing standards verified through inspection and audit in facilities that maintain the designations, "Health Canada Approved Manufacturing Facility," and FDA Registered Facility"

    - ElectRx assures that prescriptions dispensed through ElectRx and ElectRx networks are

labeled similarly to those dispensed in the US. The only difference is that ElectRx cannot put the corresponding NDC number on the specific package/bottle label.

- ElectRx and the ElectRx Call Center are fully HIPAA compliant. The possibility of an adverse drug event, dangerous drug interaction, or of a client receiving a contraindicated drug product is extremely remote. Utilizing Drug Utilization Reviews or DUR's at multiple points, a pharmacy administration management system and the dispensing Pharmacist will red flag a contraindicated medication after reviewing a patient's drug history and current drug profile. Both the US Attending Physician and the local Dispensing Pharmacist must complete a DUR this process prior to prescribing or dispensing a drug to a patient.

- Phone support to eligible member participants will be provided through our call center from 8:30 a.m. to 4:30 PM EST during US business days.

- Member participants will be advised of potential prescription or non-prescription drug reactions, interactions, and adverse side effects or appropriate precautions, based on current information available to the Dispensing Pharmacist at the time the prescription is fulfilled. If available, a drug information sheet will be provided with every prescription fulfilled through the ElectRx Network to the covered members.

- Member participants and/or the US Attending Physician will be contacted when a prescription item may be unduly delayed. Examples of when this may occur are for a product in short supply, a DUR issue, postal interruption and if additional information required to fulfill the prescription. In the event a delay occurs, the employee could obtain a limited quantity short-fill prescription through a local pharmacy.

- ElectRx will create and maintain full medication profiles for all participating ElectRx member participants.

- ElectRx will conduct both retrospective and prospective drug utilization reviews ("DUR's") including current non-prescription/over -the-counter ("OTC") medications and for herbal or nutraceutical type preparations, prior to dispensing the prescribed pharmaceutical medication.

- ElectRx will ensure that all pharmaceuticals are maintained in accordance with appropriate temperature, light, and humidity standards, during warehousing, shipping, and storage, by our fully licensed regulated licensed pharmacy networks.

- ElectRx will notify ElectRx member participants of any relevant prescription drug recalls **or** any regulatory alerts associated with any prescription drug fulfillments to an ElectRx member

participant.

- Requirements for the fulfillment of pharmaceuticals will be anticipated on a best effort basis to secure adequate inventory of such pharmaceuticals for member participants on a timely basis. ElectRx will always utilize the most cost-effective and competitive shipping rates.

- ElectRx participating pharmacy networks will always maintain fully secure supply chains, warehousing, and retail pharmacy facilities.

- ElectRx will ensure that all legal, regulatory, and other relevant documentation, including customs declarations to allow for the personal importation of the pharmaceuticals by the member participant in to the United States are diligently prepared, stored, and forwarded with all fulfilled prescription drug products.

- ElectRx will maintain ElectRx member participant confidentiality, protect member participant identity and safeguard member participant specific personal health information in order to meet and/or exceed both domestic and international privacy legislation guidelines.

- Any access to an eligible member participants profile is limited to authorized personnel only including the pharmacies/pharmacists/call center personnel and other designated ElectRx contractors, employees, the member participant who owns the personal health information, and the US Attending Physician.

EXHIBIT B: **Excluded Medications ElectRx / McAllen independent School District**

Narcotics and any and all other Controlled Substances as defined by the FDA.

Oral antibiotics or other Non – Maintenance Medications including stat orders.

Stat Fills: These are urgent fills and their immediate initiation is considered mandatory in Attending Physician's opinion)

Biologics including but not limited to a wide range of medicinal products such as vaccines, blood and blood components, allergenics, somatic cells, gene therapy, tissues and recombinant therapeutic proteins created by biological processes (as opposed to chemical).

Drugs where frequent blood levels are required for titration with respect to narrow therapeutic ranges/index (NTI Drugs) allied with close clinical observation.

Certain drugs that may require cool chain or cold chain custody to preserve therapeutic efficacy, or some drugs that are supplied in a vial or include hardware such as needles or syringes for administration. Other than the various Insulin products and their analogues as outlined in the appropriate formularies, any other products requiring cool chain or cold chain custody or accompanying hardware must be pre-approved prior to shipment to any and all member participants.

Any Drug that is the subject of current or future FDA Consumer Safety Alerts (REMS Drugs) or a Department of Homeland Security Alert or Process Change. Additions and deletions to the ElectRx Formularies will be made to reflect the current status of such alerts or process changes, with timely notification to the affected Member / Plan Sponsor.

INITIALS: _____

Exhibit “C” – Certificate of Insurance

draft

CUSTOMER NUMBER: 612026 RUN DATE: 06-23-20

JOEL SCHEMBRI
15432 SHELDON ROAD
NORTHVILLE, MI 48168

MCALLEN INDEPENDENT SCHOOL DISTRICT
2000 N 23RD ST
MCALLEN, TX 78501-6126

Certificate Copy

CERTIFICATE OF INSURANCE - COMMERCIAL

ALLSTATE INSURANCE COMPANY - NORTHBROOK, IL

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Description of Operation:

CERTIFICATE HOLDER: MCALLEN, TX 78501

CERTIFICATE HOLDER	NAMED INSURED
Name and Address of Party to Whom this Certificate is Issued	Name and Address of Insured
MCALLEN INDEPENDENT SCHOOL DISTRICT 2000 N 23RD ST MCALLEN, TX 78501-6126	ELECT RX & HEALTH SOLUTIONS LLC 32232 CROSS BOW ST BEVERLY HILLS, MI 48025-3405
	Location Address (if different than above)

This is to certify that policies of insurance listed below have been issued to the insured named above subject to the expiration date indicated below, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

TYPE OF INSURANCE AND LIMITS

Policy Number: 648174755 Effective Date: 06-11-2020 Expiration Date: 06-11-2021

COVERAGE SUMMARY

BUSINESS LIABILITY	AMOUNT	
COMPREHENSIVE LIABILITY	$ 2,000,000	Per Occurrence
DAMAGE TO PREMISES RENTED TO YOU	$ 50,000.00	Any One Premises
MEDICAL PAYMENTS	$ 10,000	Per Person
OTHER THAN PRODUCTS / COMPLETED OPERATIONS AGGREGATE	$ 4,000,000.00	
PRODUCTS / COMPLETED OPERATION AGGREGATE	$ 4,000,000.00	

PROPERTY INSURANCE

POLICY TYPE

[X] SPECIAL FORM [ ] BROAD FORM [ ] BASIC FORM [ ] BUILDERS RISK SPECIAL FORM

[ ] BUILDING [ ] Replacement Cost [ ] Actual Cash Value [ ] Blanket Limit

[X] CONTENTS $ 26,530 [X] Replacement Cost [ ] Actual Cash Value [ ] Blanket Limit

Deductible $ 500 Wind Deductible % 0 Exclude Wind [ ] YES [X] NO

ADDITIONAL COVERAGE'S:

EQUIPMENT BREAKDOWN,BLANKET ADDITIONAL INSURED

MORTGAGE CLAUSE – The policy contains a Mortgage Clause in favor of:

Mortgagee

Address

CERTIFICATE PERIOD

THIS CERTIFICATE WILL REMAIN IN FORCE FROM THE INCEPTION OF THE POLICY UNTIL THE POLICY IS CANCELLED OR EXPIRES.

POLICY INCEPTION DATE: 06-11-2020 [☒] 12:01 AM [ ] 12:00 NOON Standard Time at the location of the Insured Premises.

PROVISIONS

This form is not the contract of insurance, but attests that a policy as identified above has been issued. The provisions of the policy shall prevail in all respects.

SHOULD THE ABOVE DESCRIBED POLICY BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

JOEL SCHEMBRI 06-23-20

Authorized Representative Date

CI CW 01 01 14

Certificate Copy

CERTIFICATE OF INSURANCE - COMMERCIAL

ALLSTATE INSURANCE COMPANY - NORTHBROOK, IL

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Description of Operation:

CERTIFICATE HOLDER: MCALLEN, TX 78501

CERTIFICATE HOLDER	NAMED INSURED
Name and Address of Party to Whom this Certificate is Issued	Name and Address of Insured
MCALLEN INDEPENDENT SCHOOL DISTRICT 2000 N 23RD ST MCALLEN, TX 78501-6126	ELECT RX & HEALTH SOLUTIONS LLC 32232 CROSS BOW ST BEVERLY HILLS, MI 48025-3405
	Location Address (if different than above)

This is to certify that policies of insurance listed below have been issued to the insured named above subject to the expiration date indicated below, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

TYPE OF INSURANCE AND LIMITS

Policy Number: 648174755 Effective Date: 06-11-2020 Expiration Date: 06-11-2021

COVERAGE SUMMARY

BUSINESS LIABILITY	AMOUNT	
COMPREHENSIVE LIABILITY	$ 2,000,000	Per Occurrence
DAMAGE TO PREMISES RENTED TO YOU	$ 50,000.00	Any One Premises
MEDICAL PAYMENTS	$ 10,000	Per Person
OTHER THAN PRODUCTS / COMPLETED OPERATIONS AGGREGATE	$ 4,000,000.00	
PRODUCTS / COMPLETED OPERATION AGGREGATE	$ 4,000,000.00	

PROPERTY INSURANCE

POLICY TYPE

[X] SPECIAL FORM [ ] BROAD FORM [ ] BASIC FORM [ ] BUILDERS RISK SPECIAL FORM

[ ] BUILDING [ ] Replacement Cost [ ] Actual Cash Value [ ] Blanket Limit

[X] CONTENTS $ 26,530 [X] Replacement Cost [ ] Actual Cash Value [ ] Blanket Limit

Deductible $ 500 Wind Deductible % 0 Exclude Wind [ ] YES [X] NO

ADDITIONAL COVERAGE'S:

EQUIPMENT BREAKDOWN,BLANKET ADDITIONAL INSURED

MORTGAGE CLAUSE – The policy contains a Mortgage Clause in favor of:

Mortgagee

Address

CERTIFICATE PERIOD

THIS CERTIFICATE WILL REMAIN IN FORCE FROM THE INCEPTION OF THE POLICY UNTIL THE POLICY IS CANCELLED OR EXPIRES.

POLICY INCEPTION DATE: 06-11-2020 [☒] 12:01 AM [ ] 12:00 NOON Standard Time at the location of the Insured Premises.

PROVISIONS

This form is not the contract of insurance, but attests that a policy as identified above has been issued. The provisions of the policy shall prevail in all respects.

SHOULD THE ABOVE DESCRIBED POLICY BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

JOEL SCHEMBRI 06-23-20

Authorized Representative Date

CI CW 01 01 14

Certificate Copy

Your Proposal Coverage and Policy Limits

CONTINUED

ACKNOWLEDGED AND ACCEPTED BY:

Signature of the Insured

Date: JUNE 23/20

Reference Number: 01 WEG AG7LUP - 003

DATA SHARING AGREEMENT
Between The McAllen Independent School District
and ElectRx and Health Solutions LLC

This Data Sharing Agreement, herein referred to as "DSA", for confidential data sharing is entered into by and between the McAllen Independent School District ("MISD") and **ElectRx and Health Solutions LLC** ("Contractor") who, as parties to the DSA, elect to accept its terms.

PREAMBLE

The mission of Contractor is to **provide select pharmaceuticals at lowest net cost**. To that end, data is being requested as part of the DSA to fulfill the organization's mission. Contractor agrees that the data transferred from MISD to Contractor is and shall remain the sole and exclusive property of MISD. The DSA establishes that individually identifiable health information that falls under the protection of the Health Insurance Portability and Accountability Act ("HIPPA"), data that deals with confidentiality provisions of the Patient Safety Rule, and social security numbers will not be released. Data that is released must be used consistent with the Family Education Rights and Privacy Act (FERPA), HIPPA and MISD's policies for managing student education records and other confidential information. MISD grants Contractor license to use such data only for the following purpose and for no other purpose.

The scope of the project addressed in this DSA is limited to the use of teacher and student data solely for the purpose of **providing pharmaceuticals.**

THEREFORE, the parties agree to the following terms of this DSA:

1. Data Sharing

   This data shall be provided by MISD to Contractor. The format will vary depending on integration method and requirements. Any data received by Contractor pursuant to this DSA shall be destroyed when it is no longer needed for the designated purpose. Notwithstanding the foregoing, or anything contained hereto the contrary, to the extent that Contractor maintains regular backup or centralized retention of electronically created data or electronically stored information (collectively "ESI"), such ESI may be retained as necessary to comply with the existing policy for backup and archiving of ESI, so long as no information required to be kept confidential hereunder is otherwise accessible to any of Contractor's employees, contractors or agents.

2. Confidentiality

   Contractor will maintain the confidentiality of any and all student data obtained from MISD as a part of this DSA. The confidentiality requirements under this paragraph shall survive the termination or expiration of this DSA or any subsequent agreement intended to supersede this DSA. To ensure the continued confidentiality and security of the student and staff data processed, stored, or transmitted under this DSA, Contractor shall establish a system of safeguards that will at minimum include the following:

   a. Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all data, including electronically maintained or transmitted data received from or on behalf of MISD. These measures will be extended by contract

to all subcontractors used by Contractor.

b. Contractor and its employees, subcontractors and agents involved in the handling, transmittal, and/or processing of data provided under this DSA will be required to maintain the confidentiality of all student and staff-related personally identifiable information.

c. Procedures and systems that shall require the use of secured passwords to access computer databases used to process, store, or transmit data provided under the DSA.

d. Procedures and systems, such as good practices for assigning passwords, shall be developed and implemented to maintain the integrity of the systems used to secure computer databases used to process, store, or transmit data provided under the DSA.

e. Procedures and systems that ensure that all confidential student and staff data processed, stored, and/or transmitted under the provisions of this DSA shall be maintained in a secure manner that prevents the interception, diversion, or other unauthorized access to said data.

f. The procedures and systems developed and implemented to process, store, or transmit data provided under this DSA shall ensure that any and all disclosures of confidential student and staff data comply with all provisions of federal (HIPPA, FERPA, E-Government, etc.) and Texas state laws relating to the privacy rights of students and staff as such laws are applicable to the parties to this DSA.

g. Contractor shall return to MISD all data or any portions thereof requested by MISD, or at MISD's election and subject to clause 1 above, Contractor shall destroy all or any part of MISD's data that is within the possession or control of Contractor and shall, upon request by MISD, provide certification of such destruction.

h. Permission shall be obtained from MISD prior to publications or disclosure of data, or other uses not outlined in this DSA.

3. Indemnification

Contractor shall hold MISD and its past and present and future trustees, officers, and employees harmless and shall indemnify all such parties against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party, occurring or in any way incident to, arising out of, or in connection with any acts of Contractor and its agents, employees, and subcontractors done in connection with this DSA.

Nothing in this DSA shall be construed to create a claim or cause of action against MISD for which it is not otherwise liable, nor to waive any immunity or defense to which MISD may be entitled nor to create an impermissible deficiency debt of MISD.

4. Right to Audit

Contractor shall provide MISD and its designees with information and access to its premises

(upon giving reasonable notice) as MISD may reasonably require evidence of compliance with DSA and applicable state and federal law.

5. Entire Agreement

This document states the entire agreement between Contractor and MISD with respect to its subject matter and supersedes any previous and contemporaneous or oral representations, statements, negotiations, or agreements.

6. Execution

Each of the persons signing this DSA on behalf of a party or entity other than a natural person represents that he or she has authority to sign on behalf and to bind such party.

7. Assignment

None of the signatories to this DSA may assign their rights, duties, or obligations under this DSA, either in whole or in part, without the prior written consent of the other signatories under this DSA.

8. Severability

If any provision of this DSA is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this DSA such provision shall be fully severable. This DSA shall remain in full force and effect unaffected by such severance, provided that the severed provision(s) are not material to the overall purpose and operation of this DSA.

9. Waiver

Waiver by and signatory to this DSA of any breach of any provision of this DSA or warranty of representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this DSA shall not operate as a waiver of such right. All rights and remedies provided for in this DSA are cumulative.

10. Modification and Amendments

This DSA may be amended or modified at any time by mutual agreement of the authorized representatives of the signatories to this DSA. MISD and Contractor further agree to amend this DSA to the extent amendments are required by an applicable law or policy issued by an appropriate regulatory authority if the amendment does not materially affect the provisions of this DSA. However, if new laws, policies, or regulations applicable to MISD and Contractor are implemented which materially affect the intent of the provision of this DSA, the authorized representatives of the signatories to this DSA shall meet within a reasonable period of time, from the date of notice of such change of law, policy or regulations, to confer regarding how and/or if those laws, policies, or regulations will be applied or excepted.

11. Term of this DSA

This DSA shall be in effect for a term commencing from the effective date, which is the date

when the DSA is fully executed by both parties, until the date the current business relationship ends between MISD and Contractor.

12. Governing Law

This Agreement shall be governed by the laws of the State of Texas and is performable in Hidalgo County, Texas.

EXECUTED effective the_____day of_____, 2018.

DISTRICT:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

Conrado Alvarado, Board President

ATTEST:

McALLEN INDEPENDENT SCHOOL

DISTRICT
By: _____

Tony Forina, Board Secretary

Approved as to form:

Atlas, Hall, Rodriguez LLP

By: _____

Stephen Crain

CONTRACTOR:

ElectRx and Health Solutions LLC

By: _____

Print Name: _____

DRAFT

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval to Reject Request for Qualifications (RFQ) No. 2021-046 for Telemedicine Services

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On August 10, 2020 the Board of Trustees approved two (2) out of three (3) motions for RFQ No. 2021-046 for Telemedicine Services. The Board of Trustees approved the ranking and authorized Administration to begin negotiations with the highest ranked firm.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Administration respectfully requests to reject RFQ 2021-046. This RFQ was initially submitted prior to the COVID-19 pandemic. The District desires to further explore other telemedicine options, to include more COVID-specific requirements. This is necessary to ensure we obtain the desired services to maximize the protection and safety of our students and staff.

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees reject Request for Qualifications No. 2021-046 for Telemedicine Services.

SUBMITTED BY: Adalia Del Bosque, MSN, RN, NCSN
Adalia Del Bosque, MSN, RN, NCSN (Oct 5, 2020 18:09 CDT)

SUPERVISOR: Arely Benavides (Oct 5, 2020 18:11 CDT)

For further information contact:
Name: Adalia Del Bosque,
Office: 956-632-3275
eMail: adalia.delbosque@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Interlocal Agreement No. 2021-151 with the City of McAllen for the Press Box Renovations

REFERENCE: Goal 3 - Facility Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

After several meetings between the City of McAllen and the District, it was determined that investing in the improvements for the press box at the McAllen Veterans Memorial Stadium would be mutually beneficial. These improvements would include a complete refurbishment of the existing press box with an opportunity to expand the footprint and functionality. These improvements will help the District through a better use of the space during athletic, fine arts, graduations and other student-centric events but would also benefit the community.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

On September 28, 2020 the Board of Trustees approved the original Interlocal Agreement for approval; however, when the Agreement was presented at the City Commission, the City Commission changed some of the language in the Agreement, specifically in the fourth whereas clause and Article III.

LEGAL REVIEW:

The Agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

They City of McAllen has committed to one half of the sum of the renovation and construction cost of the press box, not to exceed $1M. The current Construction Manager at Risk (CMR) has a do not exceed directive of $3M. District has $1.5M currently allocated to the project and an additional $500K is being proposed in the September 2020 budget amendment.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Interlocal Agreement No. 2021-151 with the City of McAllen for the Press Box Renovations

SUBMITTED BY: Arely Benavides (Sep 30, 2020 17:15 CDT)

SUPERVISOR: Arely Benavides (Sep 30, 2020 17:15 CDT)

For further information contact:
Name: Arely Benavides
Office: 956-618-6000
eMail: arely.benavides@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF MCALLEN AND THE MCALLEN INDEPENDENT SCHOOL DISTRICT

STATE OF TEXAS §
§
COUNTY OF HIDALGO §

This Agreement is made by and between the McAllen Independent School District (hereafter referred to as "District") and the City of McAllen, Texas (hereafter referred to as "City") effective the 13th day of October, 2020.

WHEREAS, District owns the Memorial Veterans' Stadium, located at Bicentennial and Tamarack Avenue, in the City of McAllen, Hidalgo County, Texas, (hereinafter referred to as the "Stadium");

WHEREAS, the District and City executed that certain Interlocal Cooperative Agreement dated October 1, 2013 (the "October 1, 2013 Interlocal Agreement") wherein the District and City agreed to make certain improvements to the Stadium to more fully utilize the Stadium for the residents of the City and to designate the days of use of the Stadium by the District and the City;

WHEREAS, the District and the City desire to renovate the press box of the Stadium to further enhance the Stadium for District and City events at the Stadium;

WHEREAS, the District has procured an engineer to prepare plans for the renovation of the press box located at the Stadium (the "Press Box");

WHEREAS, the District has agreed to contribute the sum of One Million Five Hundred Thousand and no one hundredths Dollars ($1,500,000.00) to renovate the Press Box;

WHEREAS, the City has agreed to contribute one half of the sum of the renovation and construction cost of the Press Box not to exceed One Million and no one hundredths

Dollars ($1,000,000.00);

WHEREAS, District and City desire to formalize their respective monetary commitments to renovate the Press Box and to provide a process by which District and City will meet and confer if a guaranteed maximum price is received by District in excess of Two Million Five Hundred Thousand and no one hundredths Dollars ($2,500,000.00) to renovate the Press Box; and

WHEREAS, City and District have the authority to enter into this Agreement pursuant to the provisions of the Intergovernmental Cooperation Act, Texas Government Code, Section 791.001 et seq.

NOW, THEREFORE, in consideration of the foregoing and the following, the City and the District hereby agree as follows:

ARTICLE I
IMPROVEMENTS TO THE PRESS BOX AT THE STADIUM

1.1 The District hereby designates the Press Box at Veterans' Memorial Stadium as being the location for renovations and improvements under the terms and conditions of this Agreement.

1.2 The District shall prepare, by registered State of Texas engineer to be chosen by District, plans and specifications for the construction of the renovations and improvements of the Press Box located at the Stadium for review by the City. The plans and specifications shall show approximate locations, the types of improvements along with any other appurtenant equipment such as elevators, etc. The improvement plans and specifications shall be approved by the Texas Dept. of License and Regulation, Division of Architectural Barriers, prior to issuance of a building permit by City.

1.3 The District and City will mutually cooperate to create a construction schedule

which allows school events to continue during the construction process. The District shall conduct bi-weekly meetings with the City during the renovation and construction process.

ARTICLE II
MAINTENANCE

2.1 Upon completion of the renovation and construction of the Press Box, the District, at the District's expense, shall provide adequate maintenance service to the Press Box which shall include keeping all improvements and new equipment in a safe and fully functional condition, replacing equipment as necessary in accordance with recognized standards for any equipment.

2.2 The District shall provide general policing of the Press Box keeping the Press Box in a clean and orderly condition according to Federal, State, and City Health and Safety regulations.

ARTICLE III
MONETARY CONTRIBUTION BY DISTRICT AND CITY

District shall contribute the sum of One Million Five Hundred Thousand and no one hundredths Dollars ($1,500,000.00) to the renovation and construction of the Press Box. City shall contribute one half of the sum of the renovation and construction cost of the Press Box not to exceed the sum of One Million and no one hundredths Dollars ($1,000,000.00) upon the date of execution by District of the contract for renovation and construction of the Press Box. Should a renovation and construction contract be received by District in excess of Two Million Five Hundred Thousand and no one hundredths Dollars ($2,500,000.00), District and City agree to meet and confer prior to District executing such contract to determine the respective means of funding of any amount of such contract in excess of the sum of Two Million Five Hundred Thousand Dollars ($2,5000,000.00).

ARTICLE IV
OCTOBER 1, 2013 INTERLOCAL AGREEMENT

The terms and provisions of the October 1, 2013 Interlocal Agreement by and between the McAllen Independent School District and the City of McAllen remain in effect.

ARTICLE V
GENERAL CONDITIONS

5.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceable shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained, herein.

5.2 The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Should any party be in breach hereof then the non breaching party shall give sixty (60) days notice of such breach and the breaching party shall have such sixty (60) days to cure the breach before the non-breaching party may terminate this Agreement or take any other action to enforce the provisions hereof.

5.3 No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained, herein.

5.4 In the event the District or the City breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees so incurred by

such other party.

5.5 Neither the District nor the City shal1 be required to perform any term, condition or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of the District or the City, and which by the exercise of due diligence the District or the City is unable, wholly or in part, to prevent or overcome.

5.6 MEDIATION: Both the parties desire to resolve disputes without litigation. Before any dispute between the District and the City related to this Agreement which is not resolved through informal discussion can be litigated it will first be submitted to a nonbinding mediation by a mutually acceptable mediator or mediation service. The parties to the mediation shall bear the mediation costs equally.

5.7 All notices, demands or requests required or permitted under this Agreement shall be in writing, and shall be deemed to have been properly given, whether or not actually received, when the same have been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the as set forth below:

If to District: McAllen Independent School District
Attention: Jose A. Gonzalez, Ed.D.
2000 North 23rd Street
McAllen, Texas 78501

If to City: City of McAllen
Attention:
1300 Houston
McAllen, Texas 78501

The undersigned represent and warrant that they are authorized to sign on behalf of and bind to the terms of this Agreement the party each represents.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date of the last party to execute this Agreement.

McALLEN INDEPENDENT SCHOOL DISTRICT

_____

By: Conrado "Ito" Alvarado
Its: President, Board of Trustees

CITY OF McALLEN

_____

By: James Darling, Mayor

ATTEST:

_____
_____, City Secretary

Approved as to form:

_____
Kevin Pagan, City Attorney

Approved as to form:

Stephen L. Crain
Stephen L. Crain (Sep 30, 2020 13:01 CDT)

_____
Atlas, Hall & Rodriguez, LLP
By: Stephen L. Crain
Attorneys for McAllen Independent School District
for this Interlocal Cooperative Agreement

Signature:

Email:

INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF MCALLEN AND THE MCALLEN INDEPENDENT SCHOOL DISTRICT

STATE OF TEXAS §
§
COUNTY OF HIDALGO §

This Agreement is made by and between the McAllen Independent School District (hereafter referred to as "District") and the City of McAllen, Texas (hereafter referred to as "City") effective the 28th day of September, 2020.

WHEREAS, District owns the Memorial Veterans' Stadium, located at Bicentennial and Tamarack Avenue, in the City of McAllen, Hidalgo County, Texas, (hereinafter referred to as the "Stadium");

WHEREAS, the District and City executed that certain Interlocal Cooperative Agreement dated October 1, 2013 (the "October 1, 2013 Interlocal Agreement") wherein the District and City agreed to make certain improvements to the Stadium to more fully utilize the Stadium for the residents of the City and to designate the days of use of the Stadium by the District and the City;

WHEREAS, the District and the City desire to renovate the press box of the Stadium to further enhance the Stadium for District and City events at the Stadium;

WHEREAS, the District has procured an engineer to prepare plans for the renovation of the press box located at the Stadium (the "Press Box");

WHEREAS, the District has agreed to contribute the sum of One Million Five Hundred Thousand and no one hundredths Dollars ($1,500,000.00) to renovate the Press Box;

WHEREAS, the City has agreed to contribute the sum of One Million and no one hundredths Dollars ($1,000,000.00) to renovate the Press Box;

WHEREAS, District and City desire to formalize their respective monetary commitments to renovate the Press Box and to provide a process by which District and City will meet and confer if a guaranteed maximum price is received by District in excess of Two Million Five Hundred Thousand and no one hundredths Dollars ($2,500,000.00) to renovate the Press Box; and

WHEREAS, City and District have the authority to enter into this Agreement pursuant to the provisions of the Intergovernmental Cooperation Act, Texas Government Code, Section 791.001 et seq.

NOW, THEREFORE, in consideration of the foregoing and the following, the City and the District hereby agree as follows:

ARTICLE I
IMPROVEMENTS TO THE PRESS BOX AT THE STADIUM

1.1 The District hereby designates the Press Box at Veterans' Memorial Stadium as being the location for renovations and improvements under the terms and conditions of this Agreement.

1.2 The District shall prepare, by registered State of Texas engineer to be chosen by District, plans and specifications for the construction of the renovations and improvements of the Press Box located at the Stadium for review by the City. The plans and specifications shall show approximate locations, the types of improvements along with any other appurtenant equipment such as elevators, etc. The improvement plans and specifications shall be approved by the Texas Dept. of License and Regulation, Division of Architectural Barriers, prior to issuance of a building permit by City.

1.3 The District and City will mutually cooperate to create a construction schedule which allows school events to continue during the construction process. The District shall

conduct bi-weekly meetings with the City during the renovation and construction process.

ARTICLE II
MAINTENANCE

2.1 Upon completion of the renovation and construction of the Press Box, the District, at the District's expense, shall provide adequate maintenance service to the Press Box which shall include keeping all improvements and new equipment in a safe and fully functional condition, replacing equipment as necessary in accordance with recognized standards for any equipment.

2.2 The District shall provide general policing of the Press Box keeping the Press Box in a clean and orderly condition according to Federal, State, and City Health and Safety regulations.

ARTICLE III
MONETARY CONTRIBUTION BY DISTRICT AND CITY

District shall contribute the sum of One Million Five Hundred Thousand and no one hundredths Dollars ($1,500,000.00) to the renovations and construction of the Press Box. City shall contribute the sum of One Million and no one hundredths Dollars ($1,000,000.00) upon the date of execution by District of the contract for renovations and construction of the Press Box. Should a renovation and construction contract be received by District in excess of Two Million Five Hundred Thousand and no one hundredths Dollars ($2,500,000.00), District and City agree to meet and confer prior to District executing such contract to determine the respective means of funding of any amount of such contract in excess of the sum of Two Million Five Hundred Thousand Dollars ($2,5000,000.00).

ARTICLE IV
OCTOBER 1, 2013 INTERLOCAL AGREEMENT

The terms and provisions of the October 1, 2013 Interlocal Agreement by and between the McAllen Independent School District and the City of McAllen remain in effect.

ARTICLE V
GENERAL CONDITIONS

5.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceable shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained, herein.

5.2 The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Should any party be in breach hereof then the non breaching party shall give sixty (60) days notice of such breach and the breaching party shall have such sixty (60) days to cure the breach before the non-breaching party may terminate this Agreement or take any other action to enforce the provisions hereof.

5.3 No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained, herein.

5.4 In the event the District or the City breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees so incurred by such other party.

5.5 Neither the District nor the City shal1 be required to perform any term, condition

or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of the District or the City, and which by the exercise of due diligence the District or the City is unable, wholly or in part, to prevent or overcome.

5.6 MEDIATION: Both the parties desire to resolve disputes without litigation. Before any dispute between the District and the City related to this Agreement which is not resolved through informal discussion can be litigated it will first be submitted to a nonbinding mediation by a mutually acceptable mediator or mediation service. The parties to the mediation shall bear the mediation costs equally.

5.7 All notices, demands or requests required or permitted under this Agreement shall be in writing, and shall be deemed to have been properly given, whether or not actually received, when the same have been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the as set forth below:

If to District:	McAllen Independent School District Attention: Jose A. Gonzalez, Ed.D. 2000 North 23rd Street McAllen, Texas 78501
If to City:	City of McAllen Attention: 1300 Houston McAllen, Texas 78501

The undersigned represent and warrant that they are authorized to sign on behalf of and bind to the terms of this Agreement the party each represents.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date of the last party to execute this Agreement.

McALLEN INDEPENDENT SCHOOL DISTRICT

_____

By: Conrado "Ito" Alvarado
Its: President, Board of Trustees

CITY OF McALLEN

_____

By: James Darling, Mayor

ATTEST:

_____
_____, City Secretary

Approved as to form:

_____
Kevin Pagan, City Attorney

Approved as to form:

Stephen L. Crain
Stephen L. Crain (Sep 25, 2020 09:41 CDT)

_____
Atlas, Hall & Rodriguez, LLP
By: Stephen L. Crain
Attorneys for McAllen Independent School District
for this Interlocal Cooperative Agreement

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of the Resolution to the Board of Trustees of the McAllen Independent School District Identifying Hazardous Traffic Conditions for the School Year 2020-2021.

REFERENCE: Goal 1: Student Achievement/Student Focus; Strategy 4: Rigorous/World Class Standards Customized for Every Learner

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District is required to report hazardous-area conditions within a student's two mile living area that require transportation for students. As per Texas Education Code (TEC), §42.155(d), the board shall provide to the commissioner (1) a current definition of hazardous traffic conditions applicable to the district; and (2) identifies those specific hazardous traffic areas eligible for route service. District must provide the report annually to the School Transportation Unit to establish funding eligibility. The effective date of funding eligibility is the date the board adopts such a policy. If the policy is established after the beginning of a school year, the policy is not retroactive back to the beginning of the school year.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Consideration is made in accordance with the Texas Education Code (TEC), §42.155(d), and CNA (LOCAL) Policy.

LEGAL REVIEW:

The proposed Resolution has been reviewed and approved by district's counsel.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

None.

RECOMMENDED BOARD ACTION:

That the Board of Trustees Approve the Resolution to the Board of Trustees of the McAllen Independent School District by Identifying Hazardous Traffic Conditions for the School Year 2020-2021.

SUBMITTED BY: Erica Flores (Oct 8, 2020 16:22 CDT)

SUPERVISOR: Arely Benavides (Oct 8, 2020 16:23 CDT)

For further information contact:
Name: Erica Flores, Director of Transportation
Office: 956-632-3211
eMail: erica.flores@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

RESOLUTION OF THE BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT REGARDING HAZARDOUS TRAFFIC CONDITIONS

WHEREAS, Texas Education Code 42.155(d) allows the Board of Trustees of McAllen Independent School District to obtain supplemental state funding for transporting regular, otherwise ineligible students who live within two miles of their school but who would be subject to hazardous traffic conditions if they walked to school;

WHEREAS, the Texas Education Agency Handbook on School Transportation Allotments requires the Board to adopt language providing the definition of hazardous traffic conditions applicable to the District and identifying the specific hazardous areas for which such funding is requested;

WHEREAS, the Board acknowledges the Texas Education Code 42.155(d) provisions stating that a hazardous condition exists where no walkway is provided and children must walk along or cross a freeway or expressway, an underpass, an overpass or a bridge, an uncontrolled major traffic artery, an industrial or commercial area, or another comparable condition;

NOW THEREFORE BE IT RESOLVED that the Board of Trustees of McAllen Independent School District has defined hazardous traffic conditions in the same manner as stated in Texas Education Code 42.155(d) and has identified the following specific hazardous areas in which such conditions exist;

1. The blocks bounded by Peach Avenue, Ware Road, Bentsen Road and Business 83.
2. The blocks bounded by Uvalde Avenue, 23rd Street, El Rancho Road and 20th Street.
3. The blocks bounded by Ware Road, Neuhaus Drive, US Expressway 83 and Bentsen Road.
4. The blocks bounded by Avocet Avenue, Ware Road, Bentsen Road and Nolana Avenue.
5. The blocks bounded by Gull Avenue, Ware Road, Three Mile Line Road and 29th Street.
6. The blocks bounded by Gull Avenue, Nolana Avenue, 23rd Street and 29th Street.
7. The blocks bounded by Camellia Avenue, 23rd Street, Pecan Avenue and Bicentennial Boulevard.
8. The blocks bounded by Pecan Avenue, Bicentennial Boulevard, Kendlewood Avenue and 10th Street.
9. The blocks bounded by US Expressway 83, 23rd Street, Uvalde Avenue and Bicentennial Boulevard.
10. The blocks bounded by 10th Street, Bicentennial Boulevard, Business 83 and Wichita Avenue.
11. The blocks bounded by US Expressway 83, 10th Street, Jackson Road and Military Highway.
12. The blocks bounded by 10th Street, Business 83, US Expressway 83 and Jackson Avenue.
13. The blocks bounded by Bentsen Road, Auburn Avenue, Ware Road and Dove Avenue.
14. The blocks bounded by Ware Road, 33rd Street, Auburn Avenue and Lark Avenue.
15. The blocks bounded by 29th Street, 23rd Street, Lark Avenue and Auburn Avenue.
16. The blocks bounded by Colonel Rowe Boulevard, Nolana Avenue, 10th Street and Five Mile Line Road.
17. The blocks bounded by Colonel Rowe Boulevard, Trenton Avenue, Five Mile Line Road and Cynthia Avenue.
18. The blocks bounded by Hawk Avenue, Colonel Rowe Boulevard, McColl Road and Nolana Avenue.
19. The blocks bounded by Ware Road, Military Highway, Bentsen Road and Yuma Avenue.
20. The blocks bounded by Olga Avenue, Ware Road, Balboa Avenue and 33rd Street.
21. The blocks bounded by Military Highway, Ware Road, 23rd Street and Acapulco Avenue.
22. The blocks bounded by 23rd Street, Military Highway, Acapulco Avenue and 10th Street.
23. The blocks bounded by Colonel Rowe Boulevard, Fern Avenue, McColl Road and Business 83.
24. The blocks bounded by Nolana Avenue, 23rd Street, Bentsen Road and Vine Avenue.
25. The blocks bounded by Ware Road, Hibiscus Avenue, 23rd Street and Nolana Avenue.
26. The blocks bounded by Bicentennial Boulevard, 23rd Street, Camellia Avenue and Dove Avenue.
27. The blocks bounded by Nolana Avenue, Bicentennial Boulevard, Dove Avenue and 10th Street.
28. The blocks bounded by 10th Street, Nolana Avenue, Fern Avenue and McColl Road.
29. The blocks bounded by Bentsen Road, 10th Street, Auburn Avenue and Oxford Avenue.

30. The blocks bounded by Auburn Avenue, 23rd Street, Trenton Avenue and 10th Street.
31. The blocks bounded by 23rd Street, 17th Street, Trenton Avenue and Dove Avenue.
32. The blocks bounded by 23rd Street, US Expressway 83, Bicentennial Boulevard and Business 83.
33. The blocks bounded by Ware Road, Bentsen Road, Business 83 and US Expressway 83.
34. The blocks bounded by 29th Street, Ware Road, Business 83 and US Expressway 83.
35. The blocks bounded by Ware Road, Agusta Avenue, Elmira Avenue and 26th Street.
36. The blocks bounded by 27th Street, Elmira Avenue, 33rd Street and Olga Avenue.
37. The blocks bounded by Agusta Avenue, Military Highway, Bentsen Road and 10th Street.
38. The blocks bounded by El Rancho Road, 23rd Street, Jordan Avenue and 20th Street.
39. The blocks bounded by Nolana Avenue, 10th Street, Hobbs Road and McColl Road.
40. The blocks bounded by Pecan Avenue, Business 83 and Colonel Rowe Boulevard, and 10th Street.
41. The blocks bounded by Nolana Avenue, Colonel Rowe Boulevard, Pecan Avenue and 10th Street.
42. The blocks bounded by La Vista Avenue, South "J" Street, Colonel Rowe Boulevard and Nolana Avenue.
43. The blocks bounded by Three Mile Line Road, Five Mile Line Road, Bentsen Road and 23rd Street.
44. The blocks bounded by Ware Road, Three Mile Line Road, Bentsen Road and Daffodil Avenue.
45. The blocks bounded by Nolana Avenue, Ware Road, Daffodil Avenue and 23rd Street.
46. The blocks bounded by Quamasia Avenue, 25th Street, Orchid Avenue and 23rd Street.
47. The blocks bounded by Business 83, Ware Road, US Expressway 83 and 23rd Street.
48. The blocks bounded by Whitewing Avenue, Daffodil Avenue, Bentsen Road and Ware Road.
49. The blocks bounded by Trenton Avenue, Daffodil Avenue, 23rd Street and 10th Street.
50. The blocks bounded by 10th Street, Camellia Avenue, 23rd Street and US Expressway 83.
51. The blocks bounded by Colonel Rowe Boulevard, Business 83 and US Expressway 83.
52. The blocks bounded by US Expressway 83, Bales Road, Cynthia Avenue and 23rd Street.
53. The blocks bounded by Dove Avenue, 23rd Street, Nolana Avenue and 10th Street.
54. The blocks bounded by Nolana Avenue, Bicentennial Avenue, 10th Street and Pecan Avenue.
55. The blocks bounded by Pecan Avenue, 23rd Street, US Expressway 83 and Colonel Rowe Boulevard.
56. The blocks bounded by N. Center Street, Sunflower Avenue, 23rd Street and Pecan Avenue.
57. The blocks bounded by Dove Avenue, 23rd Street, Daffodil Avenue and Bentsen Road.
58. The blocks bounded by Business 83, 23rd Street, US Expressway 83 and Bentsen Road.

READ, CONSIDERED, PASSED, APPROVED AND ADOPTED THIS THE 13th DAY OF OCTOBER, 2020.

MCALLEN INDEPENDENT SCHOOL DISTRICT
By: _____
Conrado Alvarado, President, Board of Trustees
McAllen Independent School District

ATTEST:
By: _____
Tony Forina, Secretary, Board of Trustees
McAllen Independent School District

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Request for Action Regarding International Bank of Commerce ("IBC") Property Tax Waiver of Penalties and Interest

REFERENCE: Goal 4; Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Texas Property Tax Code Section 33.011 mandates the authority to grant a waiver of penalty and interest strictly to the taxing jurisdictions governing bodies. IBC is submitting a request for a waiver and refund in the amount of $78,901.65 in penalties and interest.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Hidalgo County Tax Office has reviewed this request and concludes IBC's request for waiver of $78,601.65 in late penalties and interest does not meet the requirements of Texas Property Code Section 33.011 and Section 31.01.

As per Texas Property Tax Code Section 33.011, once taxes have been assessed on a property, they cannot be removed or forgiven unless they meet the statutory requirements.

The District has consulted with our Delinquent Tax Attorney and have determined IBC's request for a waiver of the penalty and interest does not meet the requirements of Texas Property Tax Code Section 33.011. The tax attorney did not find that the Hidalgo County Tax Office (or its agents) caused its accounts to become delinquent. Therefore, the delinquent tax attorneys do not recommend a refund of penalty and interest for IBC's accounts.

LEGAL REVIEW:

Linebarger Goggan Blair & Sampson, LLP

BUDGETARY CONSIDERATIONS:

Penalties and Interest in the amount of $78,901.65.

RECOMMENDED BOARD ACTION:

That the Board of Trustees deny International Bank of Commerce ("IBC") Property Tax Waiver of Penalties and Interest as recommended in the letter dated September 25, 2020 from Linebarger Goggan Blair & Sampson LLP.

SUBMITTED BY: _____ **SUPERVISOR:** Cynthia Medrano-Richards

For further information contact:
Name: Cynthia Medrano-Richards
Office: (956) 688-5418
eMail: cindy.richards@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

LAW OFFICES OF
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP
ATTORNEYS AT LAW
1512 S. Lone Star Way
EDINBURG, TEXAS 78539

Telephone: (956) 383-4500
Facsimile: (956) 383-7820

September 25, 2020

Email: *Kelly.Salazar@lgbs.com*

Dr. J.A. Gonzalez
Superintendent
McAllen Independent School District
2000 North 23rd Street
McAllen, Texas 78501

RE: Request for Waiver of Penalties and Interest
International Bank of Commerce (IBC) Property Tax Accounts

Dear Dr. Gonzalez:

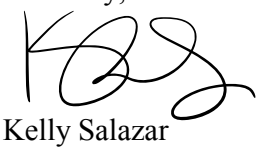
Please consider this correspondence in response to the request for a refund and waiver of penalties and interest by International Bank of Commerce ("IBC") on twenty-six (26) ad valorem tax accounts.

We have carefully reviewed IBC's request and the Hidalgo County Tax Assessor-Collector Pablo "Paul" Villarreal's letter, dated September 17, 2020, addressing IBC's request. We agree with the Tax Assessor's position that his office made no error in sending IBC's tax bills. The Hidalgo County Tax Office complied with Section 31.01 of the Texas Property Tax Code when it issued tax bills to both IBC and IBC's appointed agent for property tax matters.

Once taxes have been assessed on a property, they cannot be removed or forgiven *unless* they meet the statutory requirements of Texas Property Tax Code Section 33.011. IBC's request for a waiver of the penalty and interest does not meet the requirements of Texas Property Tax Code Section 33.011. We do not find that the Hidalgo County Tax Office (or its agents) caused its accounts to become delinquent. Therefore, we cannot recommend a refund of penalty and interest for IBC's accounts.

If you have any questions, please do not hesitate to call our office.

Sincerely,



Kelly Salazar
Partner

cc: Pablo "Paul" Villarreal

RECEIVED
SEP 21 2020
Superintendent

IBC BANK
We Do More

August 31_, 2020

Dr. J. A. Gonzalez
Superintendent McAllen ISD
2000 N 23rd St
McAllen, Texas 78501

Certified Mail

Re: International Bank of Commerce (IBC) Property Tax Accounts

Dear Dr. Gonzalez,

I am writing to you since we have been unable to resolve a dispute with Tax Accessor's office regarding the fact that IBC was assessed penalties despite an error on behalf of the Tax Assessor's office. We are hoping that after your thoughtful consideration, McAllen Independent School District will refund to IBC the penalties charged to it in the 2019 tax payments.

This year, unfortunately, by virtue of what was an error on behalf of the Tax Assessor's office; IBC did not pay its ad valorem taxes until May 28, 2020 three days after IBC realized the taxes had not been paid. The reason for this unfortunate mishap is that the Tax Assessor's office never sent a tax bill to IBC.

Texas Tax Code Section 13.01 clearly states that the Assessor's office must send a "bill" to the *owner* of the property, and not just its agent. The Tax Assessor's office has claimed to have sent IBC a "bill". However we have pointed out repeatedly to the Tax Assessor's office and their attorney that the notices they have now provided to the Bank purporting to be a "bill" clearly state "THIS IS NOT A BILL". Please see attached for your review one such notice. Without a properly labeled "bill" IBC's process of paying bills was not set in motion because it never received a "bill".

After bringing up this error to the Tax Accessors' Office it pointed out that IBC paid City of McAllen taxes. However the fact IBC paid City of McAllen taxes supports our argument and proves our point that is, had IBC received a bill from the Tax Assessor's Office it would have been paid. That is because IBC did receive a bill from City of McAllen which was clearly marked as a bill, which is why it was paid. IBC did not receive such a bill from the Tax Assessor's Office as required by the Texas Tax Code and without it IBC's process of paying bills was not initiated.

IBC also did not receive delinquent notices until May, after which IBC promptly paid its taxes. The Tax Assessor's office has claimed to have sent out tax bills and delinquent notice however the Tax Assessor's office has yet to provide proof, despite our request. We do on the

other hand have Ms. Marty Charles of IBC who is in charge of receiving these bills and delinquency notices and is more than willing to sign an affidavit attesting to the fact that IBC never received them.

If IBC had received the tax bill, the taxes would have promptly been paid as they are paid year in and year out. Instead IBC did not receive a tax bill or any subsequent statements which allowed penalties to unnecessarily accrue. For more than 25 years, IBC has never been a delinquent taxpayer. IBC prides itself on being a model corporate citizen of Hidalgo County. IBC does not evade its responsibilities, including its ad valorem taxes. Had IBC received the tax bill, we would have paid taxes timely, and thus avoided any penalty.

Accordingly, we kindly urge you to give this matter the time and attention it deserves. Please consider the above error, our track record of paying taxes on time, our involvement in the community and our commitment to McAllen Independent School District when making your decision. If you believe further discussion is merited at a board meeting, we would ask that you please put this matter on the agenda for your next meeting and notify us. We will be happy to attend and further explain our position.

Thank you for your attention and consideration in this matter. I look forward to hearing from you.

Thank you,

Adrian Villarreal
President & CEO

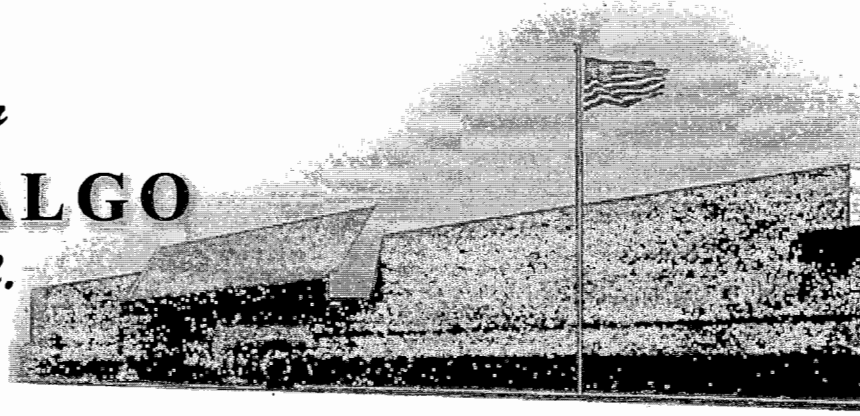
Enclosures as stated

Copy to: Ms. Adel Felix, CFA CFE
Chief Financial Officer
2000 N. 23rd Street
McAllen, Texas 78501

Office of Tax Assessor-Collector

COUNTY of HIDALGO

Pablo "Paul" Villarreal, Jr. PCC.



September 17, 2020

J. A. GONZALEZ
MCALLEN ISD
2000 NORTH 23RD
MCALLEN, TX 78501

P.O. Box 178
Edinburg, Texas 78540-0178
Ph. (956) 318-2157
Fax (956) 318-2733
www.hidalgocountytax.org

Re: International Bank of Commerce Property Tax Account
Request for Waiver of Penalties and Interest

Dear DR. GONZALEZ,

I am respectfully submitting this correspondence in response to the request for a waiver and refund from International Bank of Commerce ("IBC") in the amount of $78,901.65 in penalties and interest dated August 31, 2020. Section 33.011 of the Texas Property Tax Code mandates the authority to grant a waiver of penalty and interest strictly to the taxing jurisdictions governing bodies.

IBC Argument for Obtaining a Waiver and Refund

"This year, unfortunately by virtue of what was an error on behalf of the Tax Assessor's office; IBC did not pay its ad valorem taxes until May 28, 2020 three days after IBC realized the taxes had not been paid. The reason for this unfortunate mishap is that the Tax Assessor's office never sent a tax bill to IBC.

"Texas Tax Code Section 13.01 clearly states that the Assessor's office must send a "bill" to the *owner* of the property, and not just its agent. The Tax Assessor's office has claimed to have sent IBC a "bill". However, we have pointed out repeatedly to the Tax Assessor's office and their attorney that the notices that they have now provided to the Bank purporting to be a "bill" clearly state "THIS IS NOT A BILL". Please see attached for your review one such notice. Without a properly labeled "bill" IBC's process of paying bills was not set in motion because it never received a "bill".

"After bringing this up this error to the Tax Assessor's Office it pointed out that IBC paid City of McAllen taxes. However, the fact IBC paid City of McAllen taxes supports our argument and proves our point that is, had IBC received a bill from the Tax Assessor's Office it would

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have been paid. That is because IBC did receive a bill from City of McAllen which was clearly marked as a bill, which is why it was paid. IBC did not receive such a bill from the Tax Assessor's Office as required by the Tax Code and without it IBC's process of paying bills was not initiated."

Tax Office Response:
IBC's request for waiver and refund does not meet the requirements of Texas Property Tax Code § 33.011 and § 31.01

As the Hidalgo County Tax Assessor-Collector, I, Pablo (Paul) Villarreal, Jr. PCC, can verify that there was no error on behalf of my office. All Original 2019 Consolidated Property Tax Statements were mailed out to the Tax Agent of record and a watermark copy to IBC. This has been the same practice for prior years which were paid timely. The Tax Agent for IBC, Chris Miller of Ryan LLC, stated he delivered a transmittal file to IBC on December 10, 2019 with a check enclosed for payment of property taxes for 26 accounts.

First, IBC claims that the twenty-six (26) tax bills sent by the Hidalgo County Tax Office ("HCTO") and received by both IBC and IBC's appointed agent for property tax matters, Ryan LLC, are not tax bills for the reason that a portion of the tax bill contains a watermark stating: "THIS IS NOT A BILL THE ORIGINAL HAS BEEN SENT TO YOUR AGENT." The argument that a watermark on a portion of a tax bill would transform a tax bill to something other than a tax bill cannot be supported by law or fact. This watermark has been present on IBC's tax bill for the last four (4) years, three (3) of which, IBC paid taxes timely. Furthermore, the law does not prohibit the HCTO from advising a taxpayer that a bill has been sent to a taxpayer's agent.

It has been a common practice that all constituents that have a mortgage account, or a taxing agent, coded to their account, will get a watermarked copy of the current year's tax bill mailed to their address. The notation on the copy states, "THIS IS NOT A BILL." This is added to avoid a duplicate payment, or erroneous payment, between tax agents, mortgage companies, and constituents. Accounts, which have been authorized by property owners that are represented by a taxing agent are coded at the Appraisal District and the Mortgage Companies at the Tax Office.

Second, all Original 2019 Consolidated Property Tax Statements were sent to IBC's agent and IBC at the mailing addresses on record at the Hidalgo County Appraisal District (*See Exhibit "A" and "B"*). These are the same mailing addresses that the tax bills have been sent for over five years and, for the first time this year, delinquent notices. In addition, Section 31.01(g) of the Texas Property Tax Code provides that *"failure to send or receive the tax bill required by this section does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax."*

Third, IBC fails to disclose that its appointed agent for property tax matters, Ryan LLC, acknowledges that there was no error on the part of the HCTO. On June 12, 2020, Mr. Chris Miller of Ryan LLC informed Assessing-Correspondence Department Supervisor Esmeralda Ramirez that Ryan LLC timely sent payment for property taxes on the twenty-six (26) subject

accounts to IBC, but IBC needed to request relief because an IBC employee had a loss in the family and as a result, payments were not sent to the HCTO in a timely manner (*See Exhibit "C"*). IBC's President and CEO Adrian Villarreal also acknowledged during a May 28, 2020 meeting with the HCTO that the property tax payments were not made timely due to a hardship on the part of the IBC employee charged with the responsibility of paying all the property tax accounts within Hidalgo County. (*See Exhibit "D"*). It is my personal experience, with an operation of processing payments, that there should always be more than one employee available to complete required transactions to process in the event of an emergency. After seeking legal guidance, it was determined that HCTO complied with mailing statutory requirements in sending all statements to IBC and its Agent. Furthermore, Ryan LLC also complied with their requirements by notifying and submitting payment to IBC on December 10, 2019. All Taxing Agents uphold an Ethical obligation and duty to meet their contractual and application requirements Form 50-162 under the laws and rules of the Texas Comptroller of Public Accounts:

> *Tax Code Section 1.111 section (f) A property owner in writing filed with the appraisal district may direct the appraisal district, appraisal review board, and each taxing unit participating in the appraisal district to deliver notices, tax bills, orders, and other communication relating to one or more specified items of the owner's property to a specified person instead to the property owner. The instrument must clearly identify the person by name and give the person's address to which all notices, tax bills, orders, and other communications are to be delivered. The property owner may but is not required to designate the person's agent for other tax matters under Subsection (a) as the person to receive all notices, tax bills, orders, and other communications. The designation of an agent for other tax matters under Subsection (a) may also provide that the agent is the person to whom notices, tax bills, orders, and other communications are to be delivered under this subsection.*

As per Appraisal District records, Ryan LLC, was designated and authorized for all communications with all taxing units participating in the appraisal district.

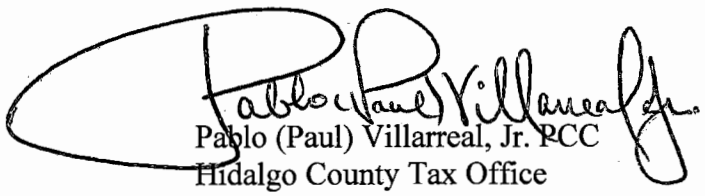
Fourthly, the City of McAllen mails their bills with the same notations if it is coded with a Taxing Agent or a Mortgage Company. This is the same practice that Hidalgo County Tax Office has in place. The City of McAllen mailed certified statements to the taxing agent on record, Ryan LLC. Furthermore, a courtesy copy with a notation of "THIS IS NOT A BILL" was mailed to IBC *(See Exhibit "E").* As per our records, notes, emails, and correspondence the taxing agent received bills timely for payment. Ultimately, *Section 31.01(g) of the Texas Property Tax Code provides that "failure to send or receive the tax bill required by this section does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax.*

As the Tax Assessor-Collector for forty-two (42) entities in Hidalgo County, it is my responsibility to collect and maintain accountability to protect all revenues. Our office prides itself on the fair, equal and uniform due process to all our constituents in Hidalgo County when it comes to the integrity of the Texas Property Tax Code and Tax Collections.

IBC's request for waiver of $78,901.65 in late penalties and interest does not meet the requirements of Texas Property Tax Code Section 33.011 and Section 31.01. Once taxes have been assessed on a property, the Texas Property Tax Code does not allow them to be removed unless they meet the statutory requirements of Texas Property Tax Code 33.011. If you believe further discussion is merited at a council meeting, I would ask that you please notify us to assist in any further assistance.

If you have any questions, please do not hesitate to call our office.

Respectfully,



Pablo (Paul) Villarreal, Jr. PCC
Hidalgo County Tax Office

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of the McAllen Independent School District October 6, 2020 Budget Amendment for Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

In accordance with TEA budget and accounting procedures guidelines, the District's official budget is comprised of the General Fund which includes Food Service and the Debt Service Fund. The District has administratively opted to officially adopt the Capital Projects Fund budget. The adoption of the budgets associated with these funds, and subsequent amendments, should be approved by the Board of Trustees. The authority to approve a budget or a budget amendment for a grant program, however, lies with the granting agency and not with the District's Board.

The administration will routinely allow amendments of existing budgeted funds between major function levels, in order to accommodate the necessary operations of the requesting department or campus. These amendments usually become necessary due to accounting coding requirements. These requests allowed at the administrative level are subject to final approval by the Board of Trustees.

The budget amendments are broken down into the following two categories:

1. Programmatic or policy changes – amendments that are necessary because of policy changes or revisions to programs that increase/decrease the budget.

2. Reclassifications – amendments that are necessary because function codes and/or amounts require adjustments but do not increase/decrease the budget.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The budget amendment detail provides explanations for the programmatic or policy changes and reclassifications.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

	General Fund
Unaudited Fund Balance	$ 98,283,927
Revenues	247,589,746
Expenditures	257,605,114
Preliminary Ending Fund Balance	$ 88,268,559

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of the McAllen Independent School District October 6, 2020 Budget Amendment for Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021.

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the McAllen Independent School District October 6, 2020 Budget Amendments for the General Fund for Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021.

SUBMITTED BY: Adel Felix

SUPERVISOR: Cynthia Medrano-Richards

For further information contact:
Name: Adel Felix CPA, CFE
Office: (956) 618-6016
eMail: adelita.felix@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

McAllen Independent School District
Summary Report as of October 6, 2020
Review of Budget Amendments and Proposed Amendments

GENERAL FUND

	A	B	C	D	E
			Budget Amendments Under Consideration		
Description	Original Budget	Revised Budget 09/30/2020	Programmatic or Policy Changes	Reclassifications	Revised Budget 10/06/2020
Unaudited Fund Balance	**98,283,927**	**98,283,927**			**98,283,927**
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	2,871,095			2,871,095
State:	137,774,797	137,774,797			137,774,797
Federal:	21,131,995	21,266,401			21,266,401
Other Sources:	0	4,294,771			4,294,771
Total Revenues	**243,116,773**	**247,589,746**	**0**	**0**	**247,589,746**
Expenditures:					
11 Instruction	125,902,178	130,798,518			130,798,518
12 Inst. Res. & Media Services	3,591,042	3,609,880			3,609,880
13 Curriculum Dev. & Inst. Staff Dev.	4,566,016	4,929,731			4,929,731
21 Inst. Leadership	3,424,579	3,257,064			3,257,064
23 School Leadership	13,398,767	13,786,701			13,786,701
31 Guid., Counseling & Eval. Ser.	10,033,333	9,939,256			9,939,256
32 Social Work Services	1,864,993	1,860,498			1,860,498
33 Health Services	3,031,453	3,110,236			3,110,236
34 Student (Pupil) Trans.	4,007,329	4,891,290			4,891,290
35 Food Services	17,566,135	17,974,783			17,974,783
36 Curricular/Extracurricular Act.	9,996,499	10,035,372			10,035,372
41 General Administration	7,895,268	8,598,230			8,598,230
51 Plant Maint. & Operations	19,817,409	22,269,134			22,269,134
52 Security and Monitoring Serv.	4,387,069	5,074,254			5,074,254
53 Data Processing Services	4,703,026	6,342,213			6,342,213
61 Community Services	35,975	42,286			42,286
71 Debt Service	7,073,589	7,078,589			7,078,589
81 Fac. Acquisition & Const.	5,000	789,774			789,774
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	585,330	1,700,000		2,285,330
Total Expenditures	**242,316,965**	**255,905,114**	**1,700,000**	**0**	**257,605,114**
Preliminary Ending Fund Balance	**99,083,735**	**89,968,559**	**(1,700,000)**	**0**	**88,268,559**

GENERAL FUND
Programmatic or Policy Changes

REVENUES:

EXPENDITURES:

Other Uses	- Transfer from Assigned Fund Balance Fund 199 General Fund to Fund 771 Unemployment Fund	$ 200,000	
	- Transfer from Assigned Fund Balance Fund 199 General Fund to Fund 753 Health Insurance Fund	1,500,000	
			1,700,000
	Grand Total		$ 1,700,000

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 13, 2020

SUBJECT: Approval of Board of Education Meeting Minutes

REFERENCE: N/A

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The minutes for each meeting of the Board of Education are traditionally brought to the Board for approval. After approval, the minutes become the Official Record of Board Action.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The Administration asks that the Board of Education consider approval of the attached minutes.

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION:
That the Board approve the minutes of the following meeting(s):

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

SUBMITTED BY: Natalia Goza (Oct 7, 2020 14:06 CDT)

SUPERVISOR:

For further information contact:
Name: Natalia Goza
Office: 956-618-6094
eMail: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Regular Meeting

Monday, September 28, 2020 5:00 PM
Auditorium/McAllen High School, 2021 La Vista, McAllen, TX 78501

Conrado Alvarado, President:	Present
Sam Saldivar, Vice-President:	Present
Tony Forina, Secretary:	Present
Debbie Aliseda, Member:	Present
Larry Esparza, Member:	Present
Marco Suarez, Member:	Present
Daniel Vela, Member:	Absent

1. **CALL MEETING TO ORDER**

   The meeting was called to order at 5:00 P.M.
   The meeting was adjourned at 5:10 P.M.
   The meeting was recessed at 6;00 P.M.

2. **PUBLIC COMMENT(S)**

   The following member(s) of the community addressed the Board:

   Sylvia Tanguma - Return back to school/ safety
   Leigh Griffith - As a parent of a student who requires special accommodations for "special education", I am finding it very difficult to be able to support my child while I have to work outside of the home.

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:**

   Motion to reorganize the agenda to place items 9A, B, C and D; items 12A, B, C and D to item 16. This motion made by Vice-President Sam Saldivar and seconded by Trustee Marco Suarez. Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Yea
Tony Forina:	Yea

Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Absent

Yea: 6, Nay: 0, Absent: 1

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**

Trustee Tony Forina gave the invocation

6. **PLEDGE OF ALLEGIANCE**

Trustee Debbie Crane Aliseda led the Pledge of Allegiance

7. **SUPERINTENDENT'S REPORT(S) -** McAllen Shared Spectrum CBRS — Dr. J. A. Gonzalez, Superintendent

This item is for information only

8. **RECOGNITION(S)**

9. **PROCLAMATION(S)**

Motion to rescind previous motion to move 9A, B, C and D: items 12A, B, C and D to item 16. This motion made by Vice-President Sam Saldivar and seconded by Trustee Suarez. Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Yea
Tony Forina:	Yea
Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Absent

Yea: 6, Nay: 0, Absent: 1

Motion to move items 3A, B, C and D; items 12A, B, C and D to item 16. This motion made by Vice-President Sam Saldivar, and seconded by Trustee Suarez. Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Yea

Tony Forina: Yea
Sam Saldivar: Yea
Marco Suarez: Yea
Daniel Vela: Absent

Yea: 6, Nay: 0, Absent: 1

A) Approval of Proclamation Regarding Persons with Disabilities History and Awareness Month (October 2020)
Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services
Dr. J. A. Gonzalez, Superintendent

Motion to approve Proclamation Regarding Down Syndrome Awareness Month (October 2020). This motion, made by Trustee Tony Forina and seconded by Vice-President Sam Saldivar, Passed.

Debbie Aliseda: Yea
Conrado Alvarado: Yea
Larry Esparza: Yea
Tony Forina: Yea
Sam Saldivar: Yea
Marco Suarez: Yea
Daniel Vela: Absent

Yea: 6, Nay: 0, Absent: 1

B) Approval of Proclamation Regarding Down Syndrome Awareness Month (October 2020)
Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services
Dr. J. A. Gonzalez, Superintendent

Motion to approve Proclamation Regarding Down Syndrome Awareness Month (October 2020). This motion, made by Trustee Tony Forina and seconded by Marco Suarez, Passed.

Debbie Aliseda: Yea
Conrado Alvarado: Yea
Larry Esparza: Yea
Tony Forina: Yea
Sam Saldivar: Yea
Marco Suarez: Yea
Daniel Vela: Absent

Yea: 6, Nay: 0, Absent: 1

C) Approval of Proclamation Regarding Bullying Prevention
Dr. J. A. Gonzalez,

Month — Superintendent
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Motion to approve Proclamation Regarding Bullying Prevention Month. This motion, made by Tony Forina and seconded by Marco Suarez, Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Yea
Tony Forina:	Yea
Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Absent

Yea: 6, Nay: 0, Absent: 1

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 Plans for Extracurricular Activities for McAllen ISD — Dr. J. A. Gonzalez, Superintendent
   Item Submitted: Paula Gonzalez, Athletic Director
   For Information Only

Attendance Taken on 9/28/2020 at 7:01 PM

Daniel Vela:	Present

2. Report Regarding Facilities, Maintenance and Operations Projects — Dr. J. A. Gonzalez, Superintendent
   Item Submitted: Arely Benavides, Assistant Superintendent District Operations
   For Information Only
3. Report Regarding Evaluation Matrix on Competitive Sealed Proposal No. 2021-022 - Agricultural Learning Center — Dr. J. A. Gonzalez, Superintendent
   Item Submitted: Arely Benavides, Assistant Superintendent District Operations
   For Information Only
4. Report Regarding Taxes Collected for August 2020 — Dr. J. A. Gonzalez, Superintendent
   Item Submitted: Cynthia Medrano Richards,

Assistant Superintendent Business Operations
For Information Only

5. Report Regarding the Monthly Financial Report for June 2020 — Dr. J. A. Gonzalez, Superintendent
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations
For Information Only

12. **ACTION ON ITEM(S) IN CLOSED SESSION**

A) Approval of Human Resources Recommendation(s) for School Year 2020-2021 — Dr. J. A. Gonzalez, Superintendent
Item Submitted: Todd Miller, Assistant Superintendent Human Resources
Motion to approve Human Resources recommendations for School Year 2020-2021. This motion made by Trustee Forina and seconded by Trustee Suarez. Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Yea
Tony Forina:	Yea
Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Yea

Yea: 7, Nay: 0

B) Human Resources Employee Resignation(s) for School Year 2020-2021 — Dr. J. A. Gonzalez, Superintendent
Item Submitted: Todd Miller, Assistant Superintendent Human Resources
For Information Only

C) Pending and/or Potential Litigation

D) Possible Real Estate Acquisition

13. **CONSENT AGENDA ITEMS**

Motion to approve consent items as presented. This motion, made by Trustee Tony Forina and seconded by Trustee Marco Suarez, Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Yea
Tony Forina:	Yea
Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Yea

Yea: 7, Nay: 0

A) Approval of Request for Maximum Class Size Waiver Application for 2020-2021
Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services — Dr. J. A. Gonzalez, Superintendent

B) Approval of 2020-2021 List of Certified Texas Teacher Evaluation and Support System (T-TESS) Appraisers
Item Submitted: Todd Miller, Assistant Superintendent Human Resources — 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)

1. Approval of Asynchronous Plan for Submission to the Texas Education Agency
Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services — Dr. J. A. Gonzalez, Superintendent

Motion to approve the Asynchronous Plan for Submission to the Texas Education Agency. This motion, made by Vice-President Sam Saldivar and seconded by Trustee Marco Suarez, Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Yea
Tony Forina:	Yea
Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Yea

Yea: 7, Nay: 0

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

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

1. Approval of Business Associate Addendum to Interlocal Cooperation Agreement No. 2020-266 Between Hidalgo County and McAllen Independent School District
Item Submitted: Arely Benavides, Assistant Superintendent District Operations — Dr. J. A. Gonzalez, Superintendent

Motion to approve of Business Associate Addendum to Interlocal Cooperation Agreement No. 2020-266 Between Hidalgo County and McAllen Independent

School District. This motion, made by Vice-President Sam Saldivar and seconded by Trustee Debbie Aliseda, Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Abstain (With Conflict)
Tony Forina:	Abstain (With Conflict)
Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Yea

Yea: 5, Nay: 0, Abstain (With Conflict): 2

2. Approval of Bid No. 2021-107 Sale of Real Property (Old l&G) and Resolution No. 2021-139 with Maria Dolores Diaz
   Item Submitted: Arely Benavides, Assistant Superintendent District Operations
   — Dr. J. A. Gonzalez, Superintendent

Motion to approve Bid No. 2021-107 Sale of Real Property (Old l & G) and Resolution No. 2021-139 with Maria Dolores Diaz. This motion, made by Trustee Tony Forina and seconded by Vice-President Sam Saldivar, Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Yea
Tony Forina:	Yea
Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Nay

Yea: 6, Nay: 1

3. Approval of Bid No. 2021-108 Sale of Real Property (Jackson) and Resolution No. 2021-152 with Domain Development Corp
   Item Submitted: Arely Benavides, Assistant Superintendent District Operations
   — Dr. J. A. Gonzalez, Superintendent

Motion to approve Bid No. 2021-108 Sale of Real Property (Jackson) and Resolution No. 2021-152 with Domain Development Corp. This motion, made by Trustee Marco Suarez and seconded by Vice-President Sam Saldivar, Passed.

Debbie Aliseda:	Yea
Conrado Alvarado:	Yea
Larry Esparza:	Yea

Tony Forina:	Yea
Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Yea

Yea: 7, Nay: 0

4. Approval of Memorandum of Understanding No. 2021-151 with the City of McAllen for the Press Box Renovations
   Item Submitted: Arely Benavides, Assistant Superintendent District Operations
   Dr. J. A. Gonzalez, Superintendent

Motion to approve Memorandum of Understanding No. 2021-151 with the City of McAllen for the Press Box Renovations. This motion, made by Trustee Marco Suarez and seconded by Trustee Tony Forina, Passed.

Debbie Aliseda:	Nay
Conrado Alvarado:	Yea
Larry Esparza:	Yea
Tony Forina:	Yea
Sam Saldivar:	Yea
Marco Suarez:	Yea
Daniel Vela:	Yea

Yea: 6, Nay: 1

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

E) **Board of Trustees Item(s)**

1. Approval of Fourth Amendment to Superintendent's Employment Contract

Motion to approve Fourth Amendment to Superintendent's Employment Contract. This motion, made by Trustee Tony Forina and seconded by Trustee Marco Suarez, Motion to make a friendly amendment with the initial motion. This motion made by Trustee Debbie Aliseda. Trustee Debbie Aliseda rescinds the friendly motion. Initial motion stands. Passed.

Debbie Aliseda:	Nay
Conrado Alvarado:	Yea
Larry Esparza:	Nay
Tony Forina:	Yea
Sam Saldivar:	Yea
Marco Suarez:	Yea

Daniel Vela: Nay
Yea: 4, Nay: 3

Motion to amend and restate the contract through the fourth amendment to list item 2, Superintendent salary. This motion, made by Trustee Debbie Aliseda and seconded by Vice-President Sam Saldivar, Passed.
Debbie Aliseda: Yea
Conrado Alvarado: Yea
Larry Esparza: Nay
Tony Forina: Yea
Sam Saldivar: Yea
Marco Suarez: Yea
Daniel Vela: Yea
Yea: 6, Nay: 1

2. Approval of Board of Education Meeting Minutes

Motion to approve meeting minutes as presented. This motion, made by Trustee Tony Forina and seconded by Vice-President Sam Saldivar, Passed.
Debbie Aliseda: Yea
Conrado Alvarado: Yea
Larry Esparza: Yea
Tony Forina: Yea
Sam Saldivar: Yea
Marco Suarez: Yea
Daniel Vela: Yea
Yea: 7, Nay: 0

a) Special Board Meeting, September 10, 2020 5:00 P.M.

b) Regular Board Meeting, September 14, 2020 5:00 P.M.

15. **SCHEDULE OF FUTURE MEETINGS**

Motion to approve meetings scheduled as presented. This motion, made by Trustee Marco Suarez and seconded by Vice-President Sam Saldivar, Passed.
Debbie Aliseda: Yea
Conrado Alvarado: Yea
Larry Esparza: Yea
Tony Forina: Yea
Sam Saldivar: Yea
Marco Suarez: Yea

Daniel Vela: Yea
Yea: 7, Nay: 0

A) Regular Board Meeting - October 13, 2020 - 5:00 P.M. - TBD

B) Regular Board Meeting - October 26, 2020 - 5:00 P.M. - TBD — Dr. J. A. Gonzalez, Superintendent

16. **CLOSED SESSION: The Board of Trustees may reconvene in Closed Session for further discussion regarding the agenda item(s) listed.**
The Board recessed into closed session at 8:35 P.M.

17. **OPEN SESSION: The Board of Trustees may reconvene into Open Session for discussion regarding the agenda item(s) listed.**
The Board reconvened into open session at 8:45 P.M.

18. **ADJOURNMENT**
Motion to adjourn at 8:50 P.M. This motion, made by Trustee Marco Suarez and seconded by Trustee Tony Forina, Passed.
Debbie Aliseda: Yea
Conrado Alvarado: Yea
Larry Esparza: Yea
Tony Forina: Yea
Sam Saldivar: Yea
Marco Suarez: Yea
Daniel Vela: Yea
Yea: 7, Nay: 0

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Board President Board Secretary