



Agenda of Regular Meeting

The Board of Trustees McAllen Independent School District

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

A Regular Meeting of the Board of Trustees of the McAllen Independent School District will be held Monday, October 26, 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) National School Bus Safety Week

Presenter: Dr. J. A. Gonzalez, Superintendent

8. RECOGNITION(S)

- A) National Procurement Institute's Achievement of Excellence in Procurement Award 6
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

9. PROCLAMATION(S)

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 the Sale of Unlimited Tax Refunding Bonds, Series 2020A and the Unlimited Tax Refunding Bonds Taxable Series 2020B 7
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

- 2. Report Regarding Fees for Interlocal Agreement No. 2021-149 Interlocal Cooperation Agreement with UT Health RGV Clinical Laboratory 10
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

- 3. Report Regarding Facilities, Maintenance and Operations Projects 18

Item Submitted: Arely Benavides, Assistant Superintendent
District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

4. Report Regarding the Monthly Financial and Investment Report for August 2020 35

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

5. Report Regarding Taxes Collected for September 2020 61

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 63

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 64

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 Request For Proposal No. 2021-124 Band Uniforms for McAllen High School 65

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

Presenter: Dr. J. A. Gonzalez, Superintendent

B) Approval of Request for Cooperative Quotes ("RFCQ") No. 2021-064 Tennis Court Improvements Resurfacing Project at Memorial High School 67

Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

C) Approval of Final Payment to D. Wilson Construction Company on Competitive Sealed Proposal No. 2020-209 Dorothea W. Brown Middle School HVAC Improvements 202

Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

D) Approval of Final Payment to American Contracting USA, Inc. on Competitive Sealed Proposal No. 2018-229 Achieve Early College Re-Roof and HVAC Upgrades 212
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

E) Approval of Interlocal Cooperative Agreement No. 2021-159 Equalis Group Purchasing Cooperative 216
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

F) Approval of Request For Proposal No. 2021-099 Travel Agent Services 220
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)

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

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

1. Approval of Competitive Sealed Proposal ("CSP") No. 2021-021 Intercom Upgrade(s) 222
Project 1 -Alvarez Elementary, Brown Middle School, Wilson Elementary Project 2 - Fossum Middle School, Hendricks Elementary, Perez Elementary Project 3 - Gonzalez Elementary, Garza Elementary, Fields Elementary
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Approval of Request For Cooperative Quotes No. 2021-138 Achieve Early College Culinary Arts Lab Renovations through 2020-002 Texas Association of School Board Buyboard Cooperative 296
Item Submitted: Arely Benavides, Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

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

E) Board of Trustees Item(s)

1. Approval of Board of Education Meeting Minutes

a) Special Board Meeting - October 5, 2020 - 5:30 P.M.

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

15. SCHEDULE OF FUTURE MEETINGS

- A) Regular Board Meeting - November 9, 2020 - 5:00 P.M. - McAllen High School Auditorium
- B) Special Board Meeting - December 7, 2020 - 5:00 P.M. - McAllen High School Auditorium
- C) Regular Board Meeting - December 14, 2020 - 5:00 P.M. - McAllen High School Auditorium

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 23, 2020 at 4:30 P.M.

*Natalia Goza
For the Board of Trustees*

**BOARD RECOGNITION FORM
McALLEN INDEPENDENT SCHOOL DISTRICT**

Meeting Date (Recommended): October 26, 2020

Title of Recognition:

Photographer Requested: No

AV needs:

Approved for Recognition: _____



Superintendent

PROCEDURE FOR BOARD RECOGNITION

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

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

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: 

SUPERVISOR: 

Approved for presentation to the Board of Education:



7 Superintendent of Schools



MEMORANDUM

Date: October 20, 2020
To: Adelita Felix, *Chief Financial Officer*
 Cindy Richards, *Assistant Superintendent for Business Operations*
From: RBC Capital Markets
Re: McAllen Independent School District
 Preliminary Refunding Analysis and Current Market Update

On October 13, 2020, McAllen Independent School District issued its \$8,075,000 Unlimited Tax Refunding Bonds, Series 2020A and \$32,800,000 Unlimited Tax Refunding Bonds, Taxable Series 2020B negotiated issuances. A summary of the refunding results for each transaction is provided below.

Refunded Bonds

Refunded Series	Refunding Series	Tax Status	Maturities to be Refunded	Refunded Par Amount	Coupon Range	Call Date	Call Price
U/L Tax Ref Bds Taxable Ser 2013B	Series 2020A	Tax-Exempt	2024 - 2030	\$8,715,000	4.000%	02/15/2023	100%
U/L Tax Ref Bds Ser 2013A	Series 2020B	Taxable	2024 - 2030	32,910,000	4.000% - 5.000%	02/15/2023	100%
Total				\$41,625,000			

Refunding Results

	Series 2020A Refunding	Series 2020B Refunding	Combined Refunding
Delivery Date	10/30/2020	10/30/2020	10/30/2020
Refunded Par Amount	\$8,715,000	\$32,910,000	\$41,625,000
Avg Coupon of Refunded Bonds	4.00%	4.06%	4.05%
All-In TIC	1.16%	1.45%	1.39%
Arbitrage Yield	0.92%	1.29%	1.21%
Escrow Yield	0.14%	0.14%	0.14%
Net Debt Service Savings	\$814,265	\$2,477,452	\$3,291,717
Avg Annual Debt Service Savings	\$81,426	\$247,745	\$329,172
Present Value Savings (\$)	\$769,909	\$2,292,551	\$3,062,460
Present Value Savings (%)	8.83%	6.97%	7.36%

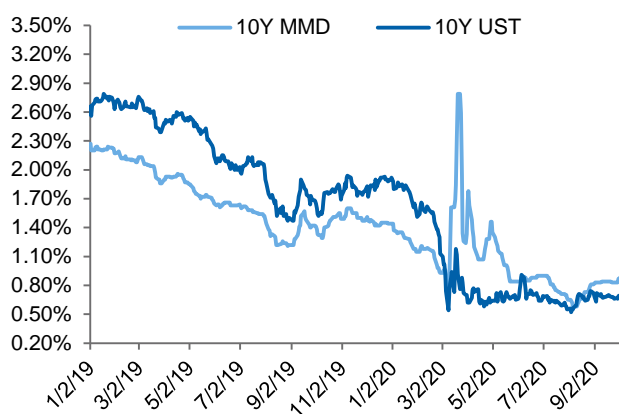
Debt Service Savings

FYE (6/30)	Series 2020A Savings	Series 2020B Savings	Total Savings
2021	\$4,565	\$1,352	\$5,917
2022	8,050	102,300	110,350
2023	8,050	103,150	111,200
2024	118,050	79,150	197,200
2025	113,550	362,150	475,700
2026	110,000	366,300	476,300
2027	111,400	365,900	477,300
2028	112,600	364,800	477,400
2029	113,600	365,250	478,850
2030	114,400	367,100	481,500
Total	\$814,265	\$2,477,452	\$3,291,717

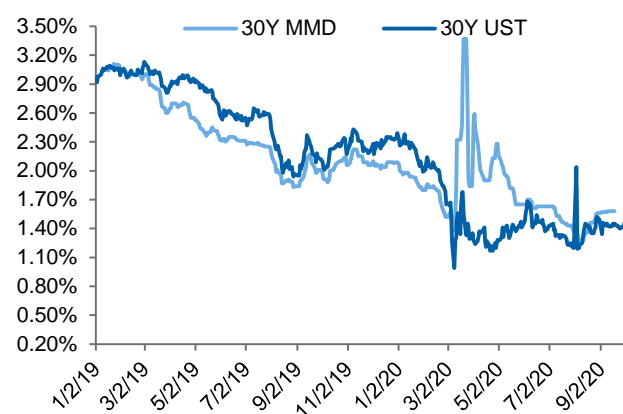
MARKET UPDATE | WEEK OF OCTOBER 13, 2020

- Continuing negotiations on a new federal stimulus package dominated both the newswires and the markets last week, as each hopeful headline fed a risk-on sentiment that drove equity markets higher.
- Increasing Covid-19 caseloads both domestically and internationally, had no effect on the equity market's positive bearing.
- Strength in equities caused fixed income yields to move higher once again.
- This week's municipal calendar will be large once again, with \$14.5 billion expected to come to market.
- Monday's Institute for Supply Management Services Index for September exceeded market expectations with a reading of 57.8 compared to the Bloomberg Survey estimate of 56.2.
- New issue volume for the first full week in October totaled nearly \$16 billion.
- Taxable issuance continues to comprise a sizable portion of new issue activity, with taxable bonds making up a projected 31% of this week's issuance.

10-Year UST and MMD



30-Year UST and MMD



Source: U.S. Department of the Treasury and Thomson Reuters Municipal Market Data

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Disclaimer

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**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

Andres Silva

SUBMITTED BY: Andres Silva (Oct 21, 2020 16:47 CDT)

J. Adams

SUPERVISOR: _____

Approved for presentation to the Board of Education:

J. Adams

10 _____
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: Conrado Alvarado
Conrado Alvarado (Oct 14, 2020 10:06 CDT)
Name: Conrado Alvarado
President, Board of Trustees

Date: Oct 14, 2020

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

**PERFORMING PARTY:
The University of Texas Rio Grande Valley**

DocuSigned by:
John H. Krouse
17E1F969B1E8404...

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

Date: 10/16/2020

UT Health RGV Clinical Diagnostic Laboratory

Lab Services Agreement

Exhibit A

Service Fees

Test Description		Cost
COVID-19 by Real Time-Polymerase Chain Reaction (RT-PCR)		
<ul style="list-style-type: none"> • with or without test kit and swabs 		\$75/test
<ul style="list-style-type: none"> • Provide appropriate consult and order for testing, with test kit and swabs 		\$125 global fee/test**
SARS-CoV-2 IgG:		
<ul style="list-style-type: none"> • with blood draw 		\$75/test
<ul style="list-style-type: none"> • without blood draw 		\$65/test

**If applicable to your contract.

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 26, 2020

SUBJECT: Report Regarding Facilities, Maintenance & Operations Monthly Projects

REFERENCE: Goal 3: Facilities Priorities; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

A monthly report from Facilities, Maintenance & Operations Department about various projects throughout the District is presented every month. Topics highlighted this month include:

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

- Completed Projects:** CNP Serving Line Replacement-Seguín ES, Bonham ES, Gonzalez ES, Jackson ES, Garza ES, Wilson ES, AECHS, Travis MS, Castaneda ES, Lamar Academy, Cathey MS
- Brown MS A/C Upgrades
McHigh A/C Upgrades
Restroom Partition Replacements/Painting-Alvarez ES, Brown MS, Lamar Academy
Achieve Early College Re-Roof and HVAC Upgrades
- Ongoing Projects:** Science Lab Upgrades at McHigh (4), Memorial (C), Rowe (C), Lamar Academy (C), AECHS (C)
Agricultural Learning Center
Fire Alarm Replacements at Cathey MS, Crockett Admin, Navarro Admin, Castaneda ES, Travis MS, Jackson ES
Intercom Replacement at Gonzalez ES, Garza ES, Alvarez ES, Fields ES, Perez, ES, Hendricks ES, Wilson ES, Fossum MS, Brown MS
Auditorium Painting at Memorial HS and Rowe HS
District Wide Hand Washing Sink Installs - Approximately 49 Sinks
- Upcoming Projects:** Lamar RR Partitions PH II Memorial Roof
Culinary Arts Lab McHigh Baseball Fence
Bottle Water Filling Stations McHigh HAC Upgrades PH II
Memorial Tennis Courts Perez ES Playscape
McHigh Door Replacements Houston ES Playground Upgrades
HVAC DW Upgrades
- Warehouse/CNP Warehouse:** PPE Deliveries DW
Campus Meal Deliveries
Sp. Ed/Bilingual
Dept. Relocations
Athletic Setup @ Stadium
Package /Mail Deliveries DW
Bus Route Food Deliveries
- Districtwide:** Electrostatic Sprayers-Custodial Staff Training
Sneeze Guards for Student/Teacher/Staff Desk


Submitted/Completed
Workorders: September 623/375

LEGAL REVIEW:
None required.


BUDGETARY CONSIDERATIONS:
None required.

RECOMMENDED BOARD ACTION:
The Report Regarding Facilities, Maintenance & Operations is submitted for information purposes only.

SUBMITTED BY:  _____

SUPERVISOR:  _____
Arely Benavides (Oct 20, 2020 17:45 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:


Report Regarding



Facilities Maintenance & Operations Projects



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October 26, 2020

Report Regarding Facilities Maintenance & Operations Projects

Completed Projects:

CNP Serving Line Replacements

- **Seguin ES**
- **Bonham ES**
- **Gonzalez ES**
- **Jackson ES**
- **Garza ES**
- **Wilson ES**
- **AECHS**
- **Travis MS**
- **Castaneda ES**
- **Lamar Academy**
- **Cathey MS**

(CNP Funds)



Report Regarding Facilities Maintenance & Operations Projects

Brown MS A/C Upgrades



10/20/2020



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Report Regarding Facilities Maintenance & Operations Projects

McAllen HS HVAC Upgrades



Report Regarding Facilities Maintenance & Operations Projects

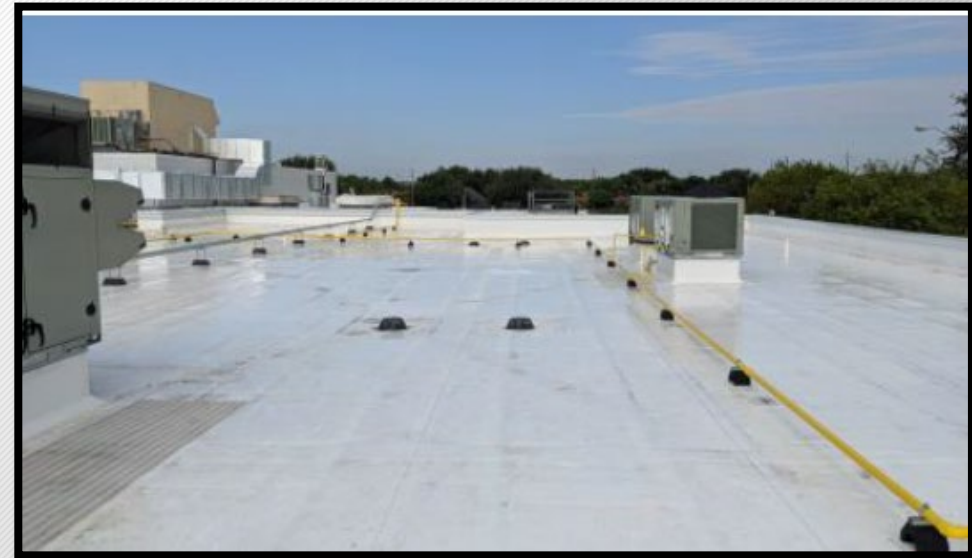
Restroom Partition Replacements and Painting

- **Alvarez ES (8)**
- **Brown MS (8)**
- **Lamar Academy (4)**



Report Regarding Facilities Maintenance & Operations Projects

Achieve Early College Re-Roof and HVAC Upgrades



Report Regarding Facilities Maintenance & Operations Projects

Ongoing Projects: Science Lab Upgrades (15)

- **McAllen HS (4)**
- **Memorial HS (C)**
- **Rowe HS (C)**
- **Lamar Academy (C)**
- **AECHS (C)**



Report Regarding Facilities Maintenance & Operations Projects

Agricultural Learning Center



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Report Regarding Facilities Maintenance & Operations Projects

Fire Alarm Replacements (6)

- **Gonzalez ES**
- **Garza ES**
- **Alvarez ES**
- **Fields ES**
- **Perez ES**
- **Hendricks ES**

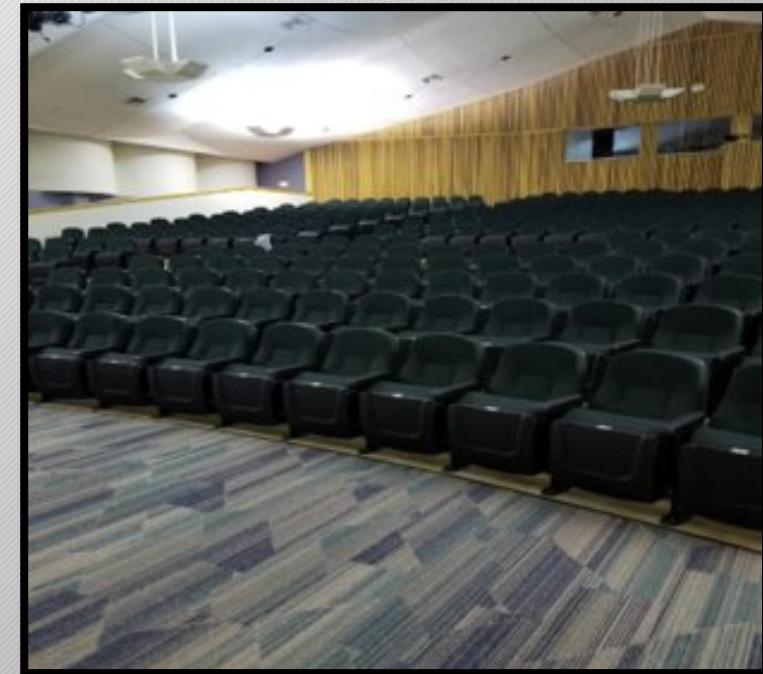
Intercom Replacements (9)

- **Gonzalez ES**
- **Garza ES**
- **Alvarez ES**
- **Fields ES**
- **Perez ES**
- **Hendricks ES**
- **Wilson ES**
- **Fossum MS**
- **Brown MS**

Report Regarding Facilities Maintenance & Operations Projects

Auditorium Painting

- **Memorial HS (C)**
- **Rowe HS**



Report Regarding Facilities Maintenance & Operations Projects

District Wide Hand Washing Sink Installs

Approximately 49 Sinks (DW)



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Report Regarding Facilities Maintenance & Operations Projects

Upcoming Projects:

- **Lamar RR Partitions Ph II**
- **Culinary Arts Lab**
- **Bottle Water Filling Stations**
- **Memorial Tennis Courts**
- **McHi Door Replacements**
- **HVAC DW Upgrades**
- **Memorial Roof**
- **McHi Baseball Fence**
- **McHi HVAC Upgrades Ph II**
- **Perez ES Playscape**
- **Houston ES Playground Upgrades**

Report Regarding Facilities Maintenance & Operations Projects

Warehouse/CNP Warehouse

- **PPE Deliveries DW**
- **Campus Meal Deliveries**
- **Sp. Ed/Bilingual**
- **Dept. Relocations**
- **Athletic Setup @ Stadium**
- **Package /Mail Deliveries DW**
- **Bus Route Food Deliveries**



Report Regarding Facilities Maintenance & Operations Projects

District Wide Electrostatic Sprayers Custodial Staff Training



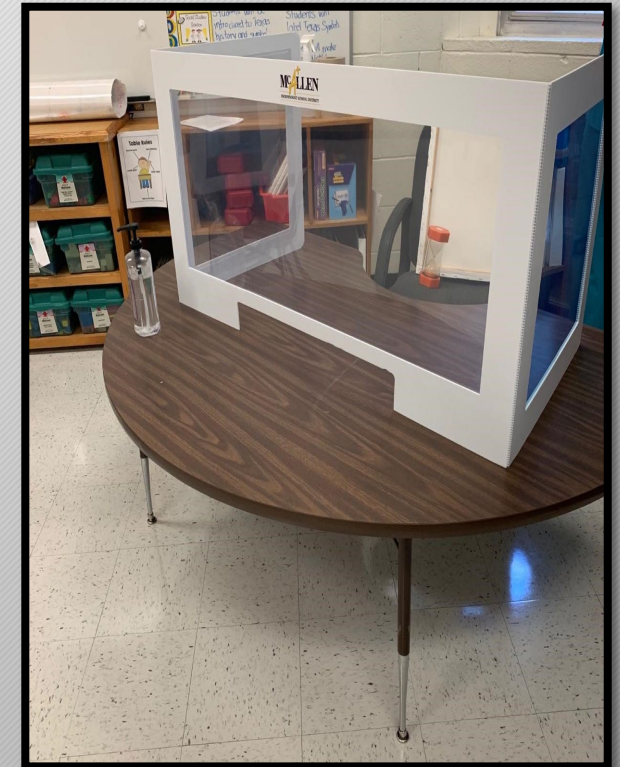
32

Report Regarding Facilities Maintenance & Operations Projects

District Wide Sneeze Guards

Student Desk

Teacher/Staff



Report Regarding Facilities Maintenance & Operations Projects

**Submitted/Completed
Work Orders**

✓ **September 623 / 375**



**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: 

SUPERVISOR: 

Approved for presentation to the Board of Education:



35 _____
Superintendent of Schools

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

	A APPROVED BUDGET 2019-20 08/31/19	B YTD ACTUAL 07/01/19 TO 08/31/19	C APPROVED BUDGET 2020-21 08/31/20	D YTD ACTUAL 07/01/20 TO 08/31/20	E DIFFERENCE C - D	F OUTSTANDING ENCUMBRANCES 09/01/20 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	\$5,027,049	\$935,187	\$4,386,299	\$467,314	\$3,918,985		\$467,314	\$3,918,985
PROPERTY TAXES	80,312,155	721,880	79,823,682	774,489	79,049,193		774,489	79,049,193
STATE PROGRAM REVENUES	141,082,125	7,772,636	137,774,797	9,955,936	127,818,861		9,955,936	127,818,861
FEDERAL PROGRAM REVENUES	19,752,435	624,584	21,131,995	657,172	20,474,823		657,172	20,474,823
OTHER RESOURCES/NON-OPERATING REVENUES	101,650	1,650	4,279,795	4,175,914	103,881		4,175,914	103,881
SUB TOTAL	\$246,275,414	\$10,055,936	\$247,396,568	\$16,030,825	\$231,365,743		\$16,030,825	\$231,365,743
EXPENDITURES:								
11 INSTRUCTION	\$134,577,586	\$1,831,968	\$129,665,732	\$5,815,121	\$123,850,611	\$105,926,549	\$111,741,670	\$17,924,062
12 INST. RES. & MEDIA SERVICES	3,671,513	41,078	3,607,318	52,194	3,555,124	2,923,931	2,976,125	631,193
13 CURRICULUM DEV. & INST. STAFF DEV.	4,034,547	431,645	4,779,125	581,164	4,197,961	2,569,773	3,150,937	1,628,188
21 INST. LEADERSHIP	2,939,334	366,610	3,239,590	359,391	2,880,199	1,988,329	2,347,720	891,870
23 SCHOOL LEADERSHIP	13,288,684	1,691,462	13,772,888	2,039,192	11,733,696	10,329,414	12,368,606	1,404,282
31 GUID., COUNSELING & EVAL. SER.	10,889,399	295,629	10,006,601	432,855	9,573,746	8,028,478	8,461,334	1,545,267
32 SOCIAL WORK SERVICES	1,470,853	157,002	1,879,013	187,291	1,691,722	1,539,613	1,726,904	152,109
33 HEALTH SERVICES	3,107,715	51,352	3,080,999	101,624	2,979,375	2,539,254	2,640,877	440,122
34 STUDENT (PUPIL) TRANS.	4,714,296	301,384	4,228,643	150,240	4,078,403	2,753,985	2,904,225	1,324,418
35 FOOD SERVICES	17,519,313	530,030	17,566,135	1,440,885	16,125,250	8,509,345	9,950,230	7,615,905
36 CURRICULAR/EXTRACURRICULAR ACT.	10,011,049	687,775	9,994,063	339,522	9,654,541	4,754,959	5,094,481	4,899,582
41 GENERAL ADMINISTRATION	7,619,488	1,117,086	8,050,636	1,238,533	6,812,103	4,835,101	6,073,634	1,977,002
51 PLANT MAINT. & OPERATIONS	22,933,885	2,796,042	20,499,504	3,069,205	17,430,299	9,438,632	12,507,837	7,991,667
52 SECURITY AND MONITORING SERV.	4,490,866	590,865	4,729,254	603,526	4,125,728	3,118,025	3,721,551	1,007,703
53 DATA PROCESSING SERVICES	5,486,390	345,027	5,540,328	596,908	4,943,420	3,029,786	3,626,694	1,913,634
61 COMMUNITY SERVICES	40,865	349	41,975	1,208	40,767	36,641	37,849	4,126
71 DEBT SERVICE	4,727,335	668,246	7,073,589	2,133,346	4,940,243	0	2,133,346	4,940,243
81 FAC. ACQUISITION & CONST.	7,207,312	613,872	606,844	-15,991	622,835	425,687	409,696	197,149
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	204,462	891,975	219,910	672,065	665,158	885,068	6,907
00 OTHER USES/NON-OPERATING EXPENSES	0	0	85,330	\$0	85,330	0	0	85,330
SUB TOTAL	\$259,609,430	\$12,721,885	\$249,379,542	\$19,346,125	\$230,033,417	\$173,412,660	\$192,758,784	\$56,620,758
REVENUES OVER (UNDER) EXPENDITURES		(\$2,665,949)		(\$3,315,300)				
PRELIMINARY BEGINNING FUND BALANCE		98,225,502		98,283,927				
PRELIMINARY ENDING FUND BALANCE		<u>\$95,559,553</u>		<u>\$94,968,627</u>				
PRELIMINARY OPTIMUM FUND BALANCE FOR UNFORESEEN EVENTS		\$83,414,639		\$84,895,186				



Monthly Investment Report

August 31, 2020

PATTERSON & ASSOCIATES



INVESTMENT PROFESSIONALS



Struggling to Sustain a Recovery

The dramatic and discouraging swings created by the Covid-19 virus has lead the US into perhaps the most challenging environment in modern history. The next few years will be crucial. Additional stimulus is needed as much now as for the expected post-covid slowdown, as everyone takes a large slow breath..

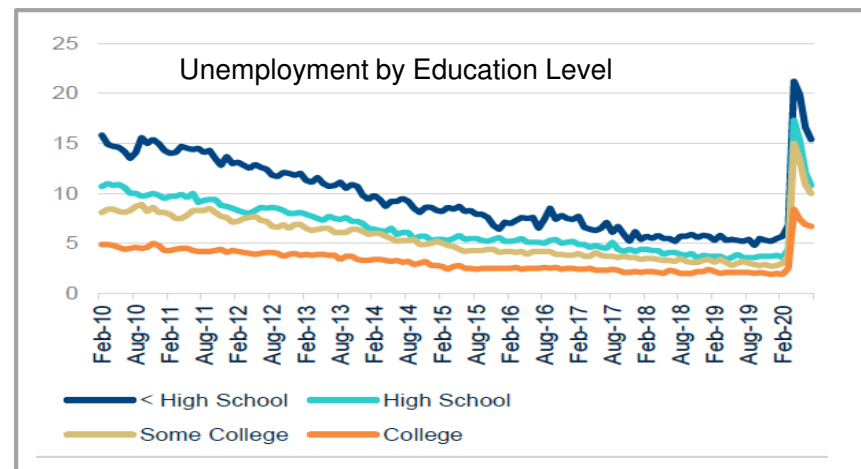
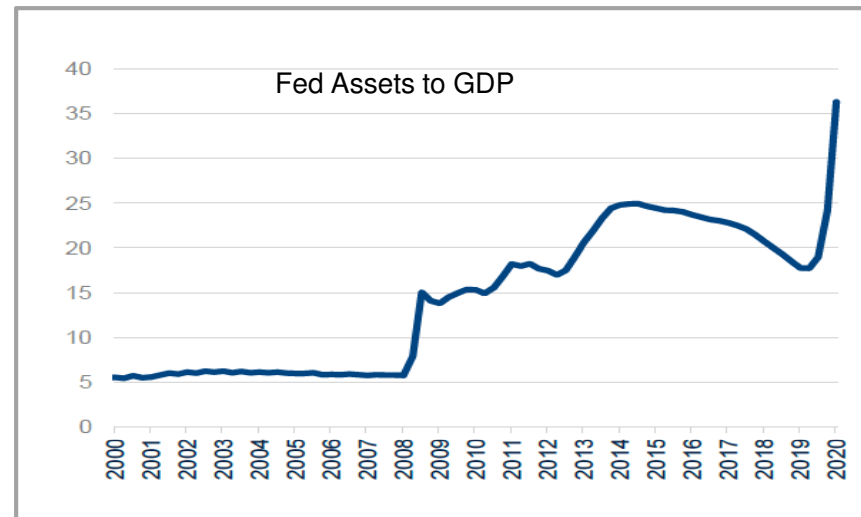
Covid exposed fault lines hidden by the longest expansion on record and caused massive job losses and the worst recession since WWII. The US has to come out of this better than pre-covid.

Bureaucratic missteps and political fights, along with lack of timely medical information combined with racial problems and income equality, have created a perfect storm of instability and populism around the world.

Previous recessions are usually investment driven, unlike Covid, so consumer consumption has dropped 34.6 % in Q2. That in turn slows manufacturing and decimates small business. A good overview is from the Chicago Fed's Index in which 29 of the 85 indicators are negative. This lessens inflation worries and so consumers are not pushed to buy.

However, there are a few strong signs that the economy is slowly sprouting. Housing is booming with existing home sales jumping like it is 2006. With this boom, prices are rising but the low mortgage rates for people with a down payment provides a major inducement. Industrial production is climbing back as is personal income.

But confidence is dropping fast even with increased income. Part of the confidence issue may be tied to the upcoming election and Congress' inaction. The strongest confidence point is of course jobs and without re-opening, jobs will remain scarce. We have seen a rise in unemployment claims, but continuing claims are stable. There is much to overcome however, the US has seen 57.4mm claims filed in the last 22 weeks. This hits the lower educational level service jobs the hardest and contributes to the social divisions. These divisions can be seen developing geo-politically around the world as well.



Monetary and Fiscal Efforts

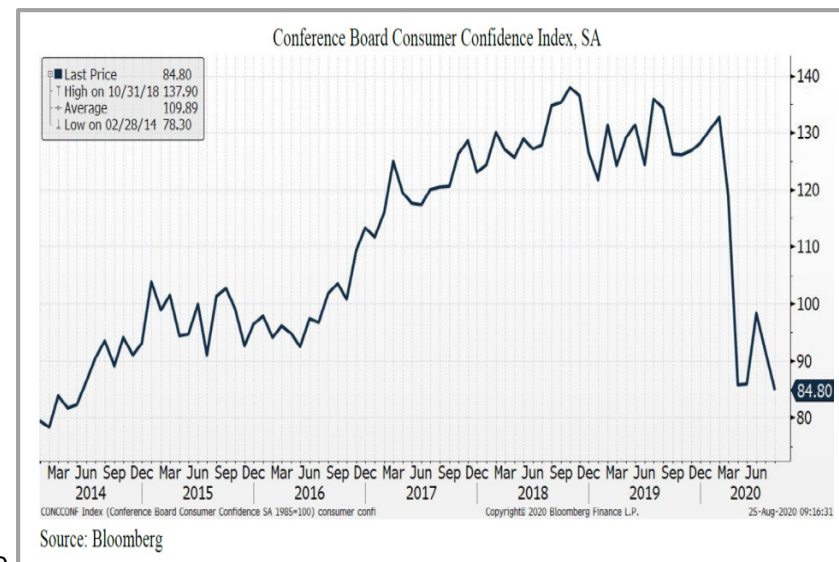
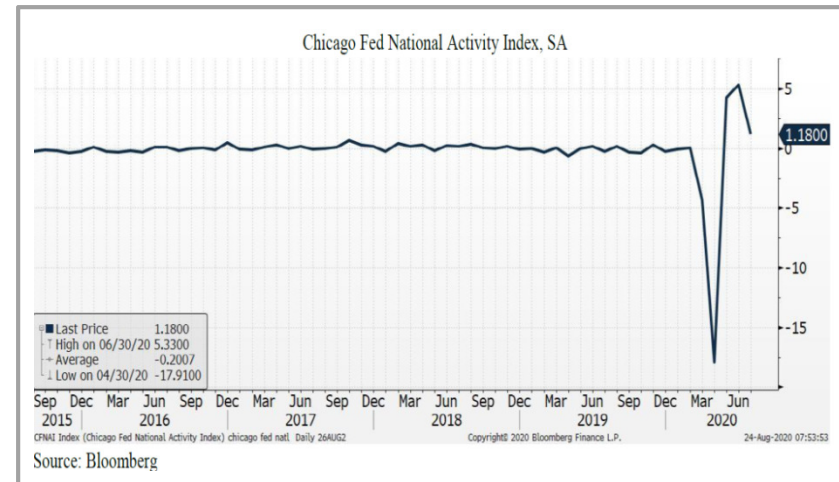
Fiscal efforts are mired in a political battle, which will not see a possible resolve until November. There will probably be another stimulus package from Congress, but its size and directives are currently uncertain. These will address the key elements of job and support, but probably not training and business support.

Monetary efforts, however, continue to move at a rapid pace. The Fed has many tools and has been using them all year. Support for **liquidity** in CP, primary and secondary markets, and asset acquisitions have eased some tensions and most importantly provided liquidity to the markets so that they do not simply seize up. But these actions have also contributed to a massive balance sheet increase and overriding debt. Remember that only in the fall of 2018 was the Fed starting to see the end of the 2008-09 QE supply.

Now the Fed has introduced its **Strategy on Longer Run Goals and Monetary Policy** furthering their goal of transparency. Judging that the Fed Funds rate has become less consistent with its goal of max employment and price stability, they see a greater risk to employment and inflation. Whereas employment is broad based and structural, inflation rates are primarily influenced by monetary policy. Hence the Committee has the ability to specify a longer-run goal for inflation through this policy. This major change is moving to a flexible **average inflation targeting** (AIT) framework which removes the 2% inflation target. Essentially strong economies over 2% would be an acceptable goal, whereas when needed they would lower the target.

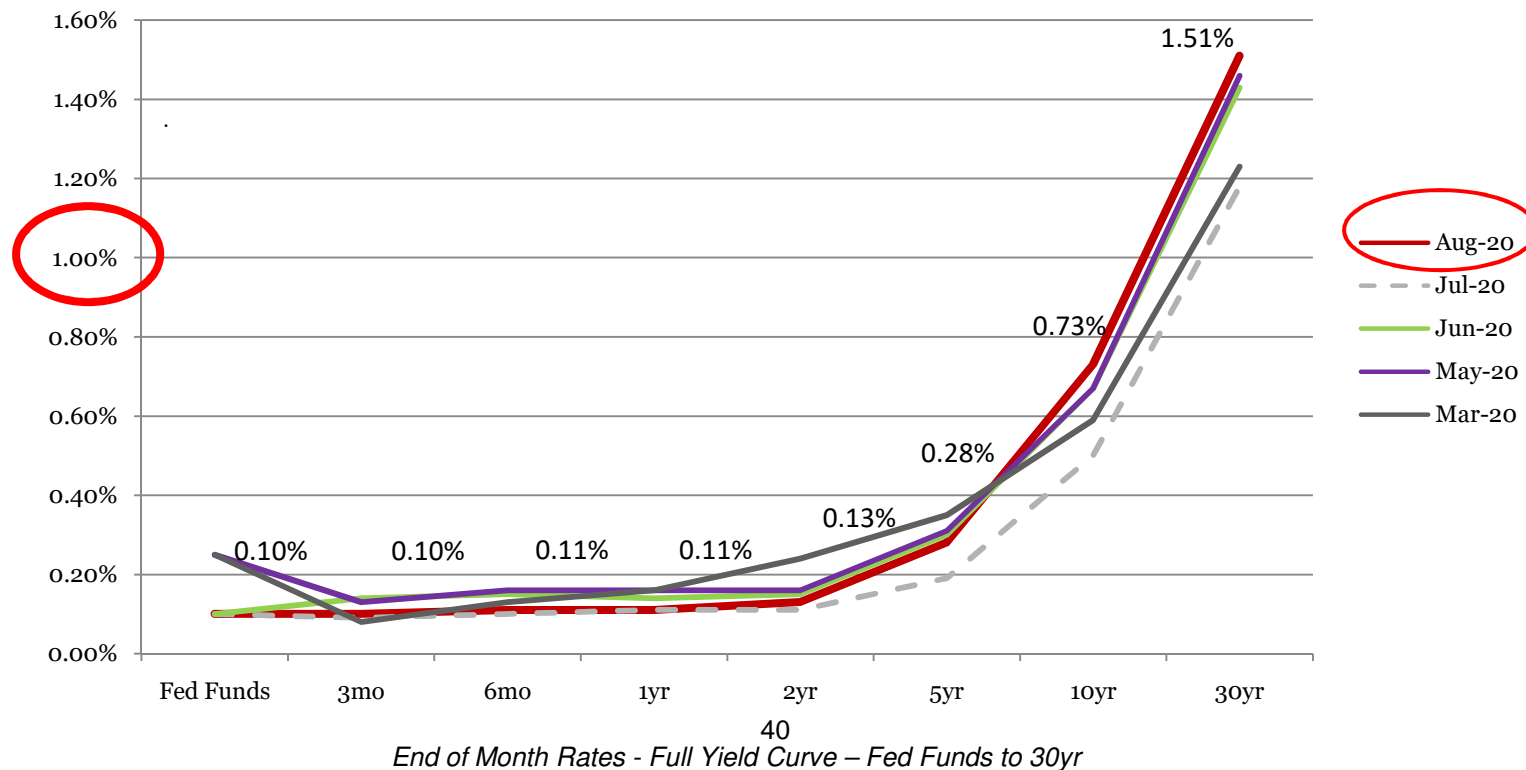
Another major idea being floated by the Fed is **Yield Curve Targeting** (YCT). This is not new since it was used in the 1940's to cap treasury yields (and therefore the level of debt) for the war effort. Although QE and forward guidance are the primary tools, it appears the Fed is moving to and may choose to yield target the short-to-medium Treasuries to further stimulate the economy.

Such a move requires monetary and fiscal policy-makers cooperation and it still has a long way to go!



To V or Not to Be

- The graph below shows the ugly truth of the yield curve as it also fights the virus. Changes in short rates are now 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 0.0% Fed Funds through 2022.
- Fear increases the demand for safe havens and the safest are the U.S. Treasury and the USD dollar. Only commercial paper offers value in the short-term.
- 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 as the Treasury extends its maturities (from Bills), 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.



McAllen Independent School District
 Monthly Investment Report
 August 1, 2020 – August 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.

<u>Portfolio as of 07/31/20:</u>		<u>Portfolio as of 08/31/20:</u>	
Beginning Book Value	\$ 126,970,188	Ending Book Value	\$ 121,120,392
Beginning Market Value	\$ 127,038,475	Ending Market Value	\$ 121,172,437
		Unrealized Gain/Loss	\$ 52,045
WAM at Beginning Period Date ¹	50 days	WAM at Ending Period Date ¹	46 days
<i>(Decrease in market value is due to seasonal cash outflows)</i>		Change in Market Value ²	\$ (5,866,038)
Average Yield to Maturity for period		0.334%	
Average Yield 180-Day Treasury Bill for period		0.120%	

Cynthia Medrano-Richards

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

Iris Luna

 Iris Luna, Director of Accounting
 McAllen ISD

Dyanira Diaz

 Dyanira Diaz, Coordinator for Accounting
 McAllen ISD

Adelita Felix

 Adelita Felix, CFO
 McAllen ISD

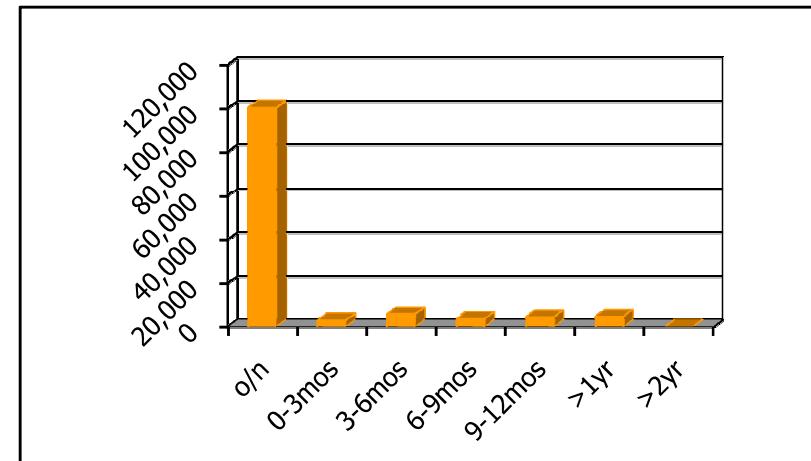
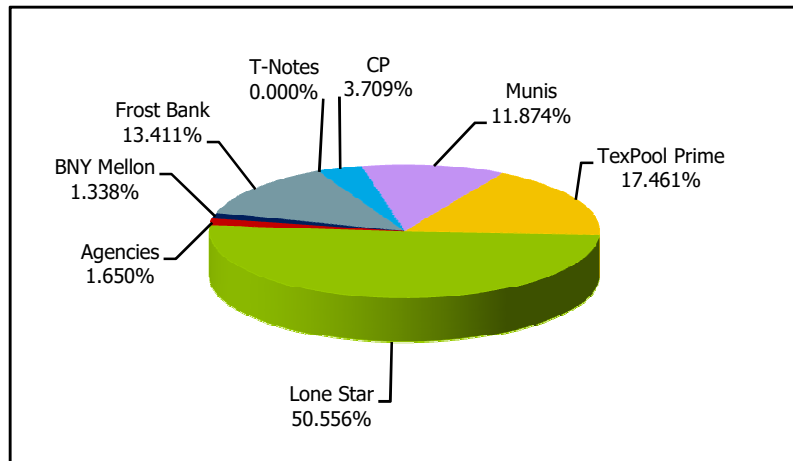
 1 WAM – weighted average maturity

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 August 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 1.02%.





**McAllen ISD
Portfolio Management
Portfolio Summary
August 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	1,620,695.06	1,620,695.06	1,620,695.06	1.34	1	1	0.000
Frost Bank	16,244,465.78	16,244,465.78	16,244,465.78	13.41	1	1	0.010
Commercial Paper Disc. -Amortizing	4,500,000.00	4,491,540.00	4,491,540.00	3.71	180	141	0.488
Federal Agency Coupon Securities	2,000,000.00	1,998,149.44	1,998,655.46	1.65	727	688	0.258
Municipal Bonds	14,193,000.00	14,434,884.63	14,382,333.52	11.87	403	240	1.295
Texpool/Texpool Prime	21,148,545.52	21,148,545.52	21,148,545.52	17.46	1	1	0.259
Lone Star	61,234,156.32	61,234,156.32	61,234,156.32	50.56	1	1	0.221
Investments	120,940,862.68	121,172,436.75	121,120,391.66	100.00%	67	46	0.334

Cash and Accrued Interest							
Accrued Interest at Purchase		7,899.54	7,899.54				
Subtotal		7,899.54	7,899.54				
Total Cash and Investments	120,940,862.68	121,180,336.29	121,128,291.20		67	46	0.334

Total Earnings	August 31 Month Ending	Fiscal Year To Date
Current Year	45,420.10	101,859.17

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 20, 2020

Adelita Felix, Chief Financial Officer



**McAllen ISD
Summary by Type
August 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	1,622,528.99	1,622,528.99	1.34	0.010	1
Subtotal	1	1,622,528.99	1,622,528.99	1.34	0.010	1
Fund: Clearing Fund						
Frost Bank	1	2,079,327.58	2,079,327.58	1.72	0.010	1
Subtotal	1	2,079,327.58	2,079,327.58	1.72	0.010	1
Fund: Capital Projects Fund						
Frost Bank	2	2,002,830.17	2,002,830.17	1.65	0.010	1
Lone Star	4	21,040,424.96	21,040,424.96	17.37	0.195	1
Municipal Bonds	2	5,728,000.00	5,811,093.52	4.80	1.156	260
Subtotal	8	28,771,255.13	28,854,348.65	23.82	0.376	53
Fund: Debt Service Fund						
Frost Bank	1	556.59	556.59	0.00	0.010	1
Lone Star	2	743,866.12	743,866.12	0.61	0.128	1
Subtotal	3	744,422.71	744,422.71	0.61	0.128	1
Fund: General Fund						
Commercial Paper Disc. -Amortizing	1	2,000,000.00	1,996,240.00	1.65	0.488	141
Municipal Bonds	2	4,670,000.00	4,744,995.91	3.92	1.246	153
Frost Bank	1	7,967,889.06	7,967,889.06	6.58	0.010	1
Lone Star	3	32,137,069.52	32,137,069.52	26.53	0.249	1
Texpool/Texpool Prime	2	21,148,545.52	21,148,545.52	17.46	0.259	1
Subtotal	9	67,923,504.10	67,994,740.01	56.14	0.300	16
Fund: Plan 457 Fund						
Frost Bank	1	23,707.53	23,707.53	0.02	0.010	1
Subtotal	1	23,707.53	23,707.53	0.02	0.010	1
Fund: Proprietary Fund						

**McAllen ISD
Summary by Type
August 31, 2020
Grouped by Fund**

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Proprietary Fund						
Frost Bank	1	2,547,625.86	2,547,625.86	2.10	0.010	1
Lone Star	2	7,312,795.72	7,312,795.72	6.04	0.186	1
Subtotal	3	9,860,421.58	9,860,421.58	8.14	0.140	1
Fund: QSCB - Reserve Fund						
Commercial Paper Disc. -Amortizing	1	2,500,000.00	2,495,300.00	2.06	0.488	141
BNY Mellon	1	1,620,695.06	1,620,695.06	1.34	0.000	1
Federal Agency Coupon Securities	1	2,000,000.00	1,998,655.46	1.65	0.258	688
Municipal Bonds	2	3,795,000.00	3,826,244.09	3.16	1.565	317
Subtotal	5	9,915,695.06	9,940,894.61	8.21	0.777	296
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	32	120,940,862.68	121,120,391.66	100.00	0.334	46



**McAllen ISD
Fund ACT - Activity Fund
Investments by Fund
August 31, 2020**

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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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	07/01/2020	1,622,528.99	1,622,528.99	1,622,528.99	0.010	0.009	0.010	1
Subtotal and Average				1,622,528.99	1,622,528.99	1,622,528.99		0.010	0.010	1
Total Investments and Average				1,622,528.99	1,622,528.99	1,622,528.99		0.010	0.010	1

**Fund CLEAR - Clearing Fund
Investments by Fund
August 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	07/01/2020	2,079,327.58	2,079,327.58	2,079,327.58	0.010	0.009	0.010	1
Subtotal and Average				2,079,327.58	2,079,327.58	2,079,327.58	0.010	0.010		1
Total Investments and Average				2,079,327.58	2,079,327.58	2,079,327.58	0.010	0.010		1

**Fund CP - Capital Projects Fund
Investments by Fund
August 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	07/01/2020	1,808,577.56	1,808,577.56	1,808,577.56	0.010	0.009	0.010		1
SYS10109	10109	Frost Bank Public Checking	07/01/2020	194,252.61	194,252.61	194,252.61	0.010	0.009	0.010		1
Subtotal and Average				2,002,830.17	2,002,830.17	2,002,830.17		0.010	0.010		1
Municipal Bonds											
114727VW7	10118	Broome County NY	04/30/2020	3,429,187.02	3,418,000.00	3,434,611.48	1.750	1.233	1.250	04/30/2021	241
95639PBF9	10116	West Virginia State Eco Dev	04/28/2020	2,381,906.50	2,310,000.00	2,391,612.30	5.000	1.006	1.020	06/15/2021	287
Subtotal and Average				5,811,093.52	5,728,000.00	5,826,223.78		1.140	1.156		259
Lone Star											
108906G	10101	Lone Star Corporate Overnight	12/18/2019	1,496,952.15	1,496,952.15	1,496,952.15	0.280	0.276	0.280		1
108906I	10108	Lone Star Corporate Overnight	02/21/2020	8,342,451.92	8,342,451.92	8,342,451.92	0.280	0.276	0.280		1
108906H	10102	Lone Star Government ON	12/18/2019	1,495,796.58	1,495,796.58	1,495,796.58	0.120	0.118	0.120		1
108906J	10113	Lone Star Government ON	03/12/2020	9,705,224.31	9,705,224.31	9,705,224.31	0.120	0.118	0.120		1
Subtotal and Average				21,040,424.96	21,040,424.96	21,040,424.96		0.192	0.195		1
Total Investments and Average				28,854,348.65	28,771,255.13	28,869,478.91		0.370	0.376		53

**Fund DS - Debt Service Fund
Investments by Fund
August 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	07/01/2020	556.59	556.59	556.59	0.010	0.009	0.010	1
Subtotal and Average				556.59	556.59	556.59		0.010	0.010	1
Lone Star										
108906B	10032	Lone Star Corporate Overnight	10/22/2015	37,843.64	37,843.64	37,843.64	0.280	0.276	0.280	1
108906C	10089	Lone Star Government ON	08/05/2019	706,022.48	706,022.48	706,022.48	0.120	0.118	0.120	1
Subtotal and Average				743,866.12	743,866.12	743,866.12		0.126	0.128	1
Total Investments and Average				744,422.71	744,422.71	744,422.71		0.126	0.128	1

**Fund GEN - General Fund
Investments by Fund
August 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	07/01/2020	7,967,889.06	7,967,889.06	7,967,889.06	0.010	0.009	0.010		1
Subtotal and Average				7,967,889.06	7,967,889.06	7,967,889.06		0.010	0.010		1
Commercial Paper Disc. -Amortizing											
05990CNL4	10120	Banco Credito MIA CP	07/24/2020	1,996,240.00	2,000,000.00	1,996,240.00		0.481	0.487	01/20/2021	141
Subtotal and Average				1,996,240.00	2,000,000.00	1,996,240.00		0.481	0.488		141
Municipal Bonds											
235036YT1	10114	DFW Int'l Airport Rev	04/07/2020	2,811,630.25	2,795,000.00	2,816,549.45	5.000	1.382	1.401	11/01/2020	61
95639PBF9	10117	West Virginia State Eco Dev	04/28/2020	1,933,365.66	1,875,000.00	1,941,243.75	5.000	1.006	1.020	06/15/2021	287
Subtotal and Average				4,744,995.91	4,670,000.00	4,757,793.20		1.229	1.246		153
Texpool/Texpool Prime											
999921	10092	Texpool	08/05/2019	10,554,277.84	10,554,277.84	10,554,277.84	0.177	0.174	0.176		1
999920	10034	Texpool Prime	11/03/2015	10,594,267.68	10,594,267.68	10,594,267.68	0.340	0.335	0.340		1
Subtotal and Average				21,148,545.52	21,148,545.52	21,148,545.52		0.255	0.259		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	25,850,997.34	25,850,997.34	25,850,997.34	0.280	0.276	0.280		1
108906D	10090	Lone Star Government ON	08/05/2019	6,286,072.18	6,286,072.18	6,286,072.18	0.120	0.118	0.120		1
Subtotal and Average				32,137,069.52	32,137,069.52	32,137,069.52		0.245	0.249		1
Total Investments and Average				67,994,740.01	67,923,504.10	68,007,537.30		0.296	0.300		15

**Fund PLAN457 - Plan 457 Fund
Investments by Fund
August 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	07/01/2020	23,707.53	23,707.53	23,707.53	0.010	0.009	0.010	1
Subtotal and Average				23,707.53	23,707.53	23,707.53		0.010	0.010	1
Total Investments and Average				23,707.53	23,707.53	23,707.53		0.010	0.010	1

**Fund PROP - Proprietary Fund
Investments by Fund
August 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	07/01/2020	2,547,625.86	2,547,625.86	2,547,625.86	0.010	0.009	0.010	1
Subtotal and Average				2,547,625.86	2,547,625.86	2,547,625.86		0.010	0.010	1
Lone Star										
108906A	10025	Lone Star Corporate Overnight	08/05/2015	3,007,708.09	3,007,708.09	3,007,708.09	0.280	0.276	0.280	1
108906E	10091	Lone Star Government ON	08/05/2019	4,305,087.63	4,305,087.63	4,305,087.63	0.120	0.118	0.120	1
Subtotal and Average				7,312,795.72	7,312,795.72	7,312,795.72		0.183	0.186	1
Total Investments and Average				9,860,421.58	9,860,421.58	9,860,421.58		0.138	0.140	1

**Fund QSCB - QSCB - Reserve Fund
Investments by Fund
August 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	07/01/2020	1,620,695.06	1,620,695.06	1,620,695.06					1
Subtotal and Average				1,620,695.06	1,620,695.06	1,620,695.06		0.000	0.000		1
Commercial Paper Disc. -Amortizing											
05990CNL4	10121	Banco Credito MIA CP	07/24/2020	2,495,300.00	2,500,000.00	2,495,300.00	0.480	0.481	0.487	01/20/2021	141
Subtotal and Average				2,495,300.00	2,500,000.00	2,495,300.00		0.481	0.488		141
Federal Agency Coupon Securities											
3133ELW67	10122	FFCB Call Note	07/24/2020	1,998,655.46	2,000,000.00	1,998,149.44	0.220	0.254	0.257	07/21/2022	688
Subtotal and Average				1,998,655.46	2,000,000.00	1,998,149.44		0.254	0.258		688
Municipal Bonds											
796815ZF8	10119	San Bernardino County CA	05/27/2020	2,517,507.81	2,490,000.00	2,530,064.10	2.030	0.986	1.000	10/01/2021	395
9143013U8	10083	University of Houston	02/27/2019	1,308,736.28	1,305,000.00	1,320,803.55	3.300	2.614	2.650	02/15/2021	167
Subtotal and Average				3,826,244.09	3,795,000.00	3,850,867.65		1.543	1.565		317
Total Investments and Average				9,940,894.61	9,915,695.06	9,965,012.15		0.766	0.777		295

**Fund QSCBDS - QSCB - Debt Service
Investments by Fund
August 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	07/01/2020	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



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

Patterson & Associates
 901 S. MoPac
 Suite 195
 Austin, TX 78746
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Trans. Date	Investment #	Fund	Trans. Type	Security ID	Par Value	Security Description	Maturity Date	Purchases	Interest	Redemptions	Cash
General Fund											
08/10/2020	10105	GEN	Maturity	05990CHA5	2,000,000.00	BCIMIA 2.0M 0.00% Mat. 08/10/2020	08/10/2020	0.00	0.00	2,000,000.00	2,000,000.00
08/27/2020	10111	GEN	Interest	882724PY7	4,000,000.00	TXTAX 4.0M 4.00% Mat. 08/27/2020	08/27/2020	0.00	156,502.73	0.00	156,502.73
08/27/2020	10111	GEN	Maturity	882724PY7	4,000,000.00	TXTAX 4.0M 4.00% Mat. 08/27/2020	08/27/2020	0.00	0.00	4,000,000.00	4,000,000.00
Subtotal								0.00	156,502.73	6,000,000.00	6,156,502.73
QSCB - Reserve Fund											
08/15/2020	10083	QSCB	Interest	9143013U8	1,305,000.00	UNIVHS 1.3M 3.30% Mat.	02/15/2021	0.00	21,532.50	0.00	21,532.50
08/27/2020	10112	QSCB	Interest	882724PY7	1,520,000.00	TXTAX 1.5M 4.00% Mat. 08/27/2020	08/27/2020	0.00	59,471.04	0.00	59,471.04
08/27/2020	10112	QSCB	Maturity	882724PY7	1,520,000.00	TXTAX 1.5M 4.00% Mat. 08/27/2020	08/27/2020	0.00	0.00	1,520,000.00	1,520,000.00
Subtotal								0.00	81,003.54	1,520,000.00	1,601,003.54
Total								0.00	237,506.27	7,520,000.00	7,757,506.27



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

Patterson & Associates
 901 S. MoPac
 Suite 195
 Austin, TX 78746
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CUSIP	Investment #	Fund	Sec. Type	Issuer	Par Value	Maturity Date	Purchase Date	Rate at Maturity	Book Value at Maturity	Interest	Maturity Proceeds	Net Income
05990CHA5	10105	GEN	ACP	BCIMIA	2,000,000.00	08/10/2020	02/13/2020		2,000,000.00	0.00	2,000,000.00	0.00
882724PY7	10111	GEN	NCB	TXTAX	4,000,000.00	08/27/2020	03/23/2020	4.000	4,000,000.00	156,502.73	4,156,502.73	156,502.73
882724PY7	10112	QSCB	NCB	TXTAX	1,520,000.00	08/27/2020	03/23/2020	4.000	1,520,000.00	59,471.04	1,579,471.04	59,471.04
Total Maturities					7,520,000.00				7,520,000.00	215,973.77	7,735,973.77	215,973.77



McAllen ISD
Interest Earnings
Sorted by Fund - Fund
August 1, 2020 - August 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	Adjusted Interest Earnings			
									Annualized Yield	Interest Earned	Amortization/ Accretion	Adjusted Interest Earnings
Fund: Activity Fund												
999915	10020	ACT	LA2	1,622,528.99	1,630,432.79	1,630,178.23		0.010	0.009	12.19	0.00	12.19
			Subtotal	1,622,528.99	1,630,432.79	1,630,178.23			0.009	12.19	0.00	12.19
Fund: Clearing Fund												
999914	10019	CLEAR	LA2	2,079,327.58	4,235,242.20	4,165,697.19		0.010	0.008	29.49	0.00	29.49
			Subtotal	2,079,327.58	4,235,242.20	4,165,697.19			0.008	29.49	0.00	29.49
Fund: Capital Projects Fund												
108906I	10108	CP	RR2	8,342,451.92	9,709,283.51	9,135,256.68		0.280	0.279	2,168.41	0.00	2,168.41
108906G	10101	CP	RR2	1,496,952.15	1,496,598.09	1,496,609.51		0.280	0.279	354.06	0.00	354.06
SYS10109	10109	CP	LA2	194,252.61	514,041.44	213,325.61		0.010	0.009	1.63	0.00	1.63
999922	10103	CP	LA2	1,808,577.56	460,920.92	751,787.56		0.010	0.009	5.73	0.00	5.73
108906J	10113	CP	RR2	9,705,224.31	9,704,263.57	9,704,294.56		0.120	0.117	960.74	0.00	960.74
108906H	10102	CP	RR2	1,495,796.58	1,495,648.51	1,495,653.29		0.120	0.117	148.07	0.00	148.07
95639PBF9	10116	CP	MC2	2,310,000.00	2,389,502.25	2,385,459.35	06/15/2021	5.000	1.002	9,625.00	-7,595.75	2,029.25
114727VW7	10118	CP	MC2	3,418,000.00	3,430,591.25	3,429,843.84	04/30/2021	1.750	1.229	4,984.59	-1,404.23	3,580.36
			Subtotal	28,771,255.13	29,200,849.54	28,612,230.40			0.381	18,248.23	-8,999.98	9,248.25
Fund: Debt Service Fund												
108906B	10032	DS	RR2	37,843.64	940,763.94	414,853.00		0.280	0.297	104.76	0.00	104.76
999918	10023	DS	LA2	556.59	7,649.36	3,448.91		0.010	0.010	0.03	0.00	0.03
108906C	10089	DS	RR2	706,022.48	892,943.54	784,365.44		0.120	0.118	78.94	0.00	78.94
			Subtotal	744,422.71	1,841,356.84	1,202,667.36			0.180	183.73	0.00	183.73
Fund: General Fund												
999921	10092	GEN	RRP	10,554,277.84	10,552,693.01	10,552,744.13		0.177	0.177	1,584.83	0.00	1,584.83
108906	10003	GEN	RR2	25,850,997.34	21,355,494.51	20,541,224.91		0.280	0.277	4,825.62	0.00	4,825.62
999917	10022	GEN	LA2	7,967,889.06	9,135,053.56	9,097,404.82		0.010	0.008	58.25	0.00	58.25
999920	10034	GEN	RRP	10,594,267.68	10,591,205.51	10,591,304.29		0.340	0.340	3,062.17	0.00	3,062.17
108906D	10090	GEN	RR2	6,286,072.18	6,285,449.91	6,285,469.98		0.120	0.117	622.27	0.00	622.27
05990CNL4	10120	GEN	ACP	2,000,000.00	1,995,413.33	1,995,840.00	01/20/2021		0.488	0.00	826.67	826.67

McAllen ISD
Interest Earnings
August 1, 2020 - August 31, 2020

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	Amortization/ Accretion	Adjusted Interest Earnings
Fund: General Fund												
05990CHA5	10105	GEN	ACP	0.00	1,999,110.00	580,530.32	08/10/2020		1.805	0.00	890.00	890.00
882724PY7	10111	GEN	NCB	0.00	4,003,192.87	3,356,126.16	08/27/2020	4.000	2.867	11,366.12	-3,192.87	8,173.25
235036YT1	10114	GEN	MC2	2,795,000.00	2,819,945.37	2,815,519.58	11/01/2020	5.000	1.393	11,645.83	-8,315.12	3,330.71
95639PBF9	10117	GEN	MC2	1,875,000.00	1,939,531.05	1,936,249.47	06/15/2021	5.000	1.002	7,812.50	-6,165.39	1,647.11
			Subtotal	67,923,504.10	70,677,089.12	67,752,413.67			0.435	40,977.59	-15,956.71	25,020.88
Fund: Plan 457 Fund												
999916	10021	PLAN457	LA2	23,707.53	23,869.92	23,770.29		0.010	0.009	0.18	0.00	0.18
			Subtotal	23,707.53	23,869.92	23,770.29			0.009	0.18	0.00	0.18
Fund: Proprietary Fund												
108906A	10025	PROP	RR2	3,007,708.09	4,206,851.91	3,587,524.69		0.280	0.281	856.18	0.00	856.18
999919	10024	PROP	LA2	2,547,625.86	987,090.25	1,037,430.37		0.010	0.011	9.60	0.00	9.60
108906E	10091	PROP	RR2	4,305,087.63	4,304,661.46	4,304,675.21		0.120	0.117	426.17	0.00	426.17
			Subtotal	9,860,421.58	9,498,603.62	8,929,630.26			0.170	1,291.95	0.00	1,291.95
Fund: QSCB - Reserve Fund												
882521	10014	QSCB	LA1	1,620,695.06	19,691.52	284,863.87				0.00	0.00	0.00
3133ELW67	10122	QSCB	FAC	2,000,000.00	1,998,529.41	1,998,596.50	07/21/2022	0.220	0.290	366.67	126.05	492.72
9143013U8	10083	QSCB	MC2	1,305,000.00	1,309,419.75	1,309,055.97	02/15/2021	3.300	2.613	3,588.75	-683.47	2,905.28
05990CNL4	10121	QSCB	ACP	2,500,000.00	2,494,266.67	2,494,800.00	01/20/2021	0.480	0.488	0.00	1,033.33	1,033.33
882724PY7	10112	QSCB	NCB	0.00	1,521,213.29	1,275,327.94	08/27/2020	4.000	2.867	4,319.13	-1,213.29	3,105.84
796815ZF8	10119	QSCB	MC2	2,490,000.00	2,519,623.80	2,518,497.55	10/01/2021	2.030	0.980	4,212.25	-2,115.99	2,096.26
			Subtotal	9,915,695.06	9,862,744.44	9,881,141.82			1.148	12,486.80	-2,853.37	9,633.43
			Total	120,940,862.68	126,970,188.47	122,197,729.22			0.438	73,230.16	-27,810.06	45,420.10



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

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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Investment #	Maturity Date	Beginning Par Value			Amounts Amortized					
Issuer	Fund	Amort. Date	Current Rate	Purchase Principal	Original Premium or Discount	Ending Book Value	And Unamortized As of 08/01/2020	Amount Amortized This Period	Amt Amortized Through 08/31/2020	Amount Unamortized Through 08/31/2020
Capital Projects Fund										
10118	CP	04/30/2021	3,418,000.00	3,434,850.74	16,850.74	3,429,187.02	-4,259.49	-1,404.23	-5,663.72	11,187.02
			1.750				12,591.25			
10116	CP	06/15/2021	2,310,000.00	2,413,049.10	103,049.10	2,381,906.50	-23,546.85	-7,595.75	-31,142.60	71,906.50
			5.000				79,502.25			
Subtotal				5,847,899.84	119,899.84	5,811,093.52	-27,806.34	-8,999.98	-36,806.32	83,093.52
							92,093.50			
General Fund										
10105	GEN	08/10/2020	2,000,000.00	1,982,298.89	-17,701.11	0.00	16,811.11	890.00	17,701.11	0.00
							-890.00			
10120	GEN	01/20/2021	2,000,000.00	1,995,200.00	-4,800.00	1,996,240.00	213.33	826.67	1,040.00	-3,760.00
							-4,586.67			
10114	GEN	11/01/2020	2,795,000.00	2,851,542.85	56,542.85	2,811,630.25	-31,597.48	-8,315.12	-39,912.60	16,630.25
			5.000				24,945.37			
10111	GEN	08/27/2020	4,000,000.00	4,019,280.00	19,280.00	0.00	-16,087.13	-3,192.87	-19,280.00	0.00
			4.000				3,192.87			
10117	GEN	06/15/2021	1,875,000.00	1,958,643.75	83,643.75	1,933,365.66	-19,112.70	-6,165.39	-25,278.09	58,365.66
			5.000				64,531.05			
Subtotal				12,806,965.49	136,965.49	6,741,235.91	-49,772.87	-15,956.71	-65,729.58	71,235.91
							87,192.62			
QSCB - Reserve Fund										
10121	QSCB	01/20/2021	2,500,000.00	2,494,000.00	-6,000.00	2,495,300.00	266.67	1,033.33	1,300.00	-4,700.00
			0.480				-5,733.33			
10122	QSCB	07/21/2022	2,000,000.00	1,998,500.00	-1,500.00	1,998,655.46	29.41	126.05	155.46	-1,344.54
			0.220				-1,470.59			
10119	QSCB	10/01/2021	2,490,000.00	2,524,137.90	34,137.90	2,517,507.81	-4,514.10	-2,115.99	-6,630.09	27,507.81
			2.030				29,623.80			
10112	QSCB	08/27/2020	1,520,000.00	1,527,326.40	7,326.40	0.00	-6,113.11	-1,213.29	-7,326.40	0.00
			4.000				1,213.29			
10083	QSCB	02/15/2021	1,305,000.00	1,321,129.80	16,129.80	1,308,736.28	-11,710.05	-683.47	-12,393.52	3,736.28
			3.300				4,419.75			
Subtotal				9,865,094.10	50,094.10	8,320,199.55	-22,041.18	-2,853.37	-24,894.55	25,199.55
							28,052.92			
Total				28,519,959.43	306,959.43	20,872,528.98	-99,620.39	-27,810.06	-127,430.45	179,528.98
							207,339.04			



**McAllen ISD
Projected Cashflow Report
Sorted by Monthly**

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

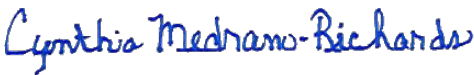
For the Period September 1, 2020 - March 31, 2021

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
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:						8,600,000.00	8,661,872.65	8,600,000.00	223,506.00	8,823,506.00

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: 

SUPERVISOR: 

Approved for presentation to the Board of Education:



61 _____
Superintendent of Schools

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

COMPARATIVE RATE OF COLLECTIONS

MCALLEN I.S.D. SML - 47	ORIGINAL TAX LEVY	COLLECTED TO DATE	DROPPED YRS AFTER PURGE	MODIF. TO DATE	TAXES OUTSTANDING	PERCENT 2020/2021	COLLECTED 2019/2020
2020 TAX ROLL					-	#DIV/0!	0.00%
2019 & PRIOR YRS	7,532,806.64	1,131,929.05	(182,936.50)	(76,783.32)	6,141,157.77	15.56%	13.18%
ROLLBACK	54,273.83	22,272.60		-	32,001.23	41.04%	33.36%
TOTALS	7,587,080.47	1,154,201.65	(182,936.50)	(76,783.32)	6,173,159.00		

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

	MCALLEN ISD	MONTHLY MODIFICATIONS
CURRENT YEAR-BASE TAX	-	- CURRENT
CURRENT YEAR-P&I	-	
PRIOR YEARS-BASE TAX	321,410.52	(4,374.69) PRIOR
PRIOR YEARS-P&I	81,201.43	
ROLLBACK	-	- ROLLBACK
ROLLBACK P&I	-	
ATTORNEY FEES	56,466.90	- PURGED
TOTAL COLLECTIONS	459,078.85	(4,374.69)
LESS TRANSFERRED	291,542.07	
LESS IN TRANSIT	154,118.36	
LESS DUE TO HCAD COMM FEES	223.42	
LESS DUE TO CO TREASURER	13,195.00	
BALANCE	0.00	

*****AFFIDAVIT*****

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

Pablo (Paul) Villarreal Jr.

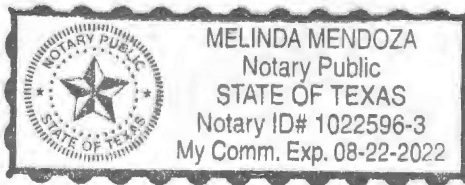
ASSESSOR-COLLECTOR OF TAXES FOR MCALLEN I.S.D., TEXAS



SWORN AND SUBSCRIBED BEFORE ME THIS 6TH DAY OF OCTOBER 2020 A.D.

Melinda Mendoza

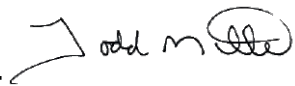
NOTARY PUBLIC, HIDALGO COUNTY, TEXAS



**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: _____

SUPERVISOR: 

Approved for presentation to the Board of Education:

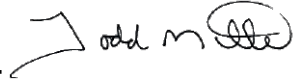


63 _____
Superintendent of Schools **Oct 19, 2020**

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: _____

SUPERVISOR: 

Approved for presentation to the Board of Education:



64 _____
Superintendent of Schools **Oct 19, 2020**

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: *Jim Egger (Fine Arts)*
Jim Egger (Fine Arts) (Oct 22, 2020 08:00 CDT)

SUPERVISOR: 
Silvia Ibarra (Oct 22, 2020 08:37 CDT)

Approved for presentation to the Board of Education:



65 _____
Superintendent of Schools

No	Criteria	Max. Pts. 100	Fruhauf Uniforms, Inc.
	Total Points	100	96
	Ranking		1
1	Price	35	35
	<i>Cost</i>		<i>\$160,004.50</i>
2	Reputation of the vendor and of the vendor's goods or services;	2.5	2.5
	<i>Q2 List 5 school references in immediate area wearing garments</i>	<i>2.5</i>	<i>2.5</i>
3	The quality of the vendor's goods or services	43	43
	<i>Samples</i>	<i>43</i>	<i>43</i>
4	The extent to which the goods or services meet District's needs	15	15
	<i>Q4 Delivery of complete order by 6/1/2021</i>	<i>10</i>	<i>10</i>
			<i>180 days</i>
	<i>Delivery of pilot uniform (days)</i>	<i>5</i>	<i>5</i>
			<i>21 days after award</i>
5	Past Relationship with District	2	0
	<i>Positive past history = 2 pts; No and/or Not positive past history = 0 pts</i>		
6	HUB	1	0
7	Total long-term cost to the district to acquire the vendor's goods or services	0	0
8	Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state	1	0
	<i>in Texas = 5 pts; Out of State Vendor = 0 pts</i>		<i>Kansas</i>
9	Any other relevant factor specifically listed in the request for bids or proposals.	0	0

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: 

SUPERVISOR: 
Arely Benavides (Oct 22, 2020 05:07 CDT)

Approved for presentation to the Board of Education:



67 _____
Superintendent of Schools

Open Date/Time:
Thursday, October 8, 2020
3:00 P.M.

RFCQ 2021-064 McAllen ISD Tennis Court Improvements

VENDOR NAME:	Ema Sport Solutions LLC (Jhon Mario Madrigal)	Hellas Construction, Inc.	
	City/State	Missouri City, TX	Austin, TX
	Date Received:	10/08/20	10/08/20
	Addendum (1 & 2) - Acknowledged:	1&2	1&2
PROJECT			
Total Cost:	\$93,800.00	\$85,374.96	
Completion Time (in Calendar Days)	60	30	

IonWave Detail - Tabulation

RFCQ 2021-064 McAllen ISD Tennis Court Improvements					Hellas Construction, Inc.		Ema Sport Solutions LLC (Jhon Mario Madrigal)	
					Total Price	\$85,374.96	Total Price	\$93,800.00
Line #	Description	QTY	UOM	Estimated	Unit	Extended	Unit	Extended
1	Resurface and Restripe Existing Tennis Courts (Including practice area)	8	EA		\$7,176.87	\$57,414.96	\$6,750.00	\$54,000.00
2	Replace Wind Screens	1	Lump Sum		\$13,160.00	\$13,160.00	\$20,000.00	\$20,000.00
3	Replace Nets, Net Posts and Net Tightener Mechanisms	8	EA		\$600.00	\$4,800.00	\$1,225.00	\$9,800.00
4	Owner Contingency Include \$10,000	1	LS		\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00

**MCALLEN INDEPENDENT SCHOOL DISTRICT
2021-174 HELLAS CONSTRUCTION, INC. AGREEMENT THROUGH RFCQ 2021-064**

This Contract, made and entered into on the 26th day of October, 2020 (the "Commencement Date") by and between the **McAllen Independent School District** (hereinafter referred to as "District") and **Hellas Construction, Inc.** a Texas corporation (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, District is a party/member to an Interlocal Cooperative Agreement with Interlocal Purchasing System (TIPS) (the "Cooperative");

WHEREAS, through the Cooperative, District may award contract(s) to Cooperative awarded vendors;

WHEREAS, District recognizes that the Facilities, Maintenance, and Operations 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 quotes from vendors, more particularly described on Exhibit A attached hereto;

WHEREAS, Contractor submitted a quote in response to the needs of the District;

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 Cooperative Quote No. 2021-064
- C. Exhibit "B" - Contractor's Services and Fees Pursuant to Request for Cooperative Quote No. 2021-064
- D. Exhibit "C" – Contractor's Certificate of Insurance
- E. Exhibit "D" – Payment Bond

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 through December 31, 2021. Construction is to be completed within thirty (30) calendar days from issuance of Notice to Proceed. 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. The Contractor shall be entitled to receive payment for Work accepted and executed through the date of termination.

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: Hellas Construction, Inc.
Attn: Jack Adams, VP of Estimating
E-mail: jadams@hellasconstruction.com
Phone: 512-250-2910
12710 Research Boulevard, Ste. 240
Austin, TX 78759

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 POUNOUNS

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.

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 as of the day and date first written above.

DISTRICT:

McAllen Independent School District

Hellas Construction, Inc.

By: _____
Marco Suarez, Board President

By: _____
Jack Adams

Title: VP of Estimating

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

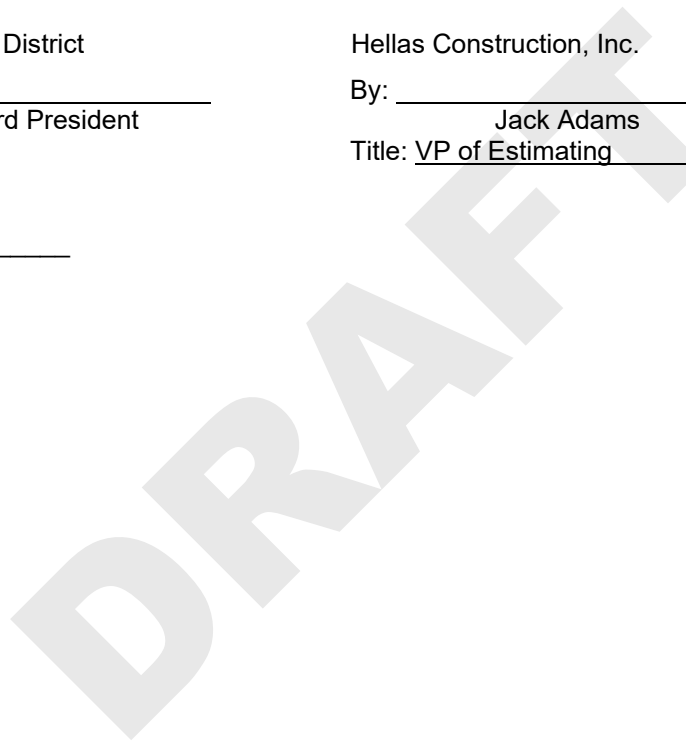


EXHIBIT A

Contractor's Services

DRAFT

PROJECT MANUAL

FOR

**Request for Cooperative Quote
McAllen ISD Tennis Court Improvements
Resurfacing Project - Memorial High School**



McAllen ISD Board of Trustees

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

**Javier Hinojosa Engineering
416 E. Dove Avenue
McAllen, Texas 78504
(956) 668-1588
Email: Javhin@Rgv.Rr.Com
TBPELS Firm No. F-1295**

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B. Attachment B – W-9	6 Pages
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DIVISION 01 – TECHNICAL SPECIFICATIONS

- 01005 Definitions and Terminology
- 01040 Project Administration
- 01300 Submittals
- 01310 Project Schedule
- 01411 Environmental Protection
- 01568 Erosion and Sediment Control during Construction
- 01700 Project Closeout Procedures
- 02000 Athletic Surface Coating System for Hot Mix Asphalt Tennis Courts
- General Conditions of Contract for Engineering Construction

McAllen Independent School District
General Requirements – Request for Co-operative Quote

It is the intent of McAllen Independent School District (“District”), through this Request for Cooperative Quote, to select a contractor (“Contractor”) offering the best value for the referenced project.

OWNER: McAllen Independent School District
2000 N. 23rd St.
McAllen, TX 78501-6126

PROJECT NAME: 2021-064 McAllen ISD Tennis Court Improvements Resurfacing Project - Memorial High School

PROJECT BUDGET: \$90,000.00

PROPOSAL DEADLINE: **October 8, 2020 at 3:00 p.m.**
LOCATION: Contractors interested in attending the **virtual** Proposal Opening **shall** submit their email address to sandra.zamora@mcallenisd.net no later than 09/15/2020 at 3:00 PM.

DEADLINE TO SUBMIT QUESTIONS: **September 30, 2020 at 10:00 a.m.**

ARCHITECT/ENGINEER: Javier Hinojosa Engineering
416 E. Dove Avenue
McAllen, Texas 78504
(956) 668-1588
Email: Javhin@Rgv.Rr.Com
TBPELS Firm No. F-1295

DISTRICT PROJECT MANAGER: **Melissa Rodriguez**
Project Manager of Facilities, Maintenance & Operations
4309 Warrior Drive, Bldg. B.
McAllen, Texas 78501

Documents/Specifications may be obtained online from the **IonWave** website at <http://www.mcallenisd.ionwave.net>, beginning **September 25, 2020**. **Contractors are responsible for viewing the webpage regularly, or prior to submitting a proposal, to ensure that no addenda or additional information have been issued for the solicitation.**

MCALLEN ISD NEW VENDOR REGISTRATION!

McAllen ISD Purchasing Services is pleased to announce that we shall be transitioning to a NEW bidding portal. Current and new vendors interested in doing business with McAllen ISD shall register in order to receive bid/proposal notifications. Interested vendors may register online by visiting: <https://mcallenisd.ionwave.net/Login.aspx>

McAllen Independent School District
General Requirements – Request for Co-operative Quote

1.0 PERFORMANCE BOND AND PAYMENT BOND

- 1.1 Performance bonds shall be required for bids/proposals in excess of one hundred thousand dollars (\$100,000). Payment Bonds shall be required for bids/proposals in excess of twenty-five thousand dollars (\$25,000).
- 1.2 When a performance or payment bond is required, the amounts shall be for 100% of the contract amount **(including contingency)**. Any required bond(s) shall be filed with the District within ten (10) days from the date of the Notice of Award.
- 1.3 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.
- 1.4 Bonds and other forms of surety shall be made payable to McAllen Independent School District.
- 1.5 Bonds in excess of one hundred thousand dollars (\$100,000.00) shall 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.
- 1.6 Payment and Performance Bonds shall be in accordance with Texas Government Code 2253.

2.0 INSURANCE

- 2.1 Each Contractor shall include complete cost for insurance required under the “General Terms and Conditions” and any Supplementary Conditions with the proposal.
- 2.2 Contractor shall carry and keep in full force for the duration of the project the following coverages:
 - 2.2.1 Workers’ Compensation – Statutory Limits.
 - 2.2.2 Employer’s Liability:
 - 2.2.2.1 Bodily Injury by Accident - \$500,000 Each Accident.
 - 2.2.2.2 Bodily Injury by Disease - \$500,000 Each Employee.
 - 2.2.2.3 Bodily Injury by Disease - \$500,000 Policy Limit.
 - 2.2.3 Commercial General Liability (Premises Operations, Independent Contractors, Products/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage) – Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per Occurrence and \$2,000,000 aggregate.
 - 2.2.4 Comprehensive Automotive Liability - \$1,000,000 Combined Single Limit per Occurrence.
 - 2.2.5 District's Protective Liability Insurance Policy – The successful Contractor shall obtain an owner's liability insurance policy, at Contractor's expense, naming the District and its employees insured with the following limits: Bodily Injury - \$1,000,000 Each Occurrence and \$1,000,000 Aggregate.
 - 2.2.6 Umbrella Excess Liability Insurance
 - 2.2.6.1 Bodily Injury \$2,000,000.00 per occurrence and
 - 2.2.6.2 Property Damage \$2,000,000.00 aggregate
 - 2.2.7 All policies shall contain special endorsements to include:
 - 2.2.7.1 The District as an additional insured (except for Workers’ Compensation).
 - 2.2.7.2 Waiver of subrogation in favor of the District under the Workers’ Compensation and Liability policies.
 - 2.2.7.3 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.
- 2.3 Workers' Compensation Insurance Coverage.
 - 2.3.1 Definitions:
 - 2.3.1.1 Certificate of insurance 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.
 - 2.3.1.2 Duration of the project - includes the time from the beginning of the work on the project until the Contractors work on the project has been completed and accepted by the District.

McAllen Independent School District
General Requirements – Request for Co-operative Quote

- 2.3.1.3 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.
- 2.4 The Contractor shall provide certificate, 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.
- 2.5 The Contractor shall provide a certificate of insurance coverage to the District prior to being awarded the contract.
- 2.6 If the insurance coverage period shown on the contractor's current certificate of insurance ends during the duration of the project, the Contractor shall, prior to the end of the coverage period, file a new certificate with the District showing that coverage has been extended.
- 2.7 The Contractor shall obtain from each person providing services on the project, and provide to the District:
- 2.7.1 a certificate of insurance coverage, prior to that person beginning work on the project, so the District will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- 2.7.2 no later than seven (7) days after receipt by the contractor, a new certificate of insurance coverage showing extension of coverage, if the coverage period shown on the current certificate of insurance ends during the term of the project.
- 2.8 The Contractor shall retain all required certificates of insurance coverage for the duration of the project and for one year thereafter.
- 2.9 The Contractor shall notify the District in writing by certified mail or personal delivery, within ten (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.
- 2.10 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.
- 2.11 The Contractor shall contractually ensure that the following clauses are incorporated into each contract with each person with whom it contracts for services on this project:
- 2.11.1 Agree to 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;
- 2.11.2 Agree to provide to the contractor, prior to that person beginning work on the project, a certificate of insurance coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- 2.11.3 Agree to provide the contractor, prior to the end of the insurance coverage period, a new certificate of insurance coverage showing extension of coverage, if the coverage period shown on the current certificate of insurance coverage ends during the term of the project;
- 2.11.4 Agree to obtain from each other person with whom it contracts, and provide to the contractor:
- 2.11.4.1 a certificate of insurance coverage, prior to the other person beginning work on the project; and
- 2.11.4.2 a new certificate of insurance coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of insurance coverage ends during the term of the project;
- 2.11.4.3 Agree to retain all required certificates of insurance coverage on file for the duration of the project and for one year thereafter;
- 2.11.4.4 Agree to notify the District in writing by certified mail or personal delivery, within ten (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

McAllen Independent School District
General Requirements – Request for Co-operative Quote

- 2.11.4.5 Agree to contractually require each person with whom it contracts, to perform as required by paragraphs 2.3.9.1 - 2.3.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- 2.12 By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the District that all employees of the contractor who shall provide services on the project shall be covered by workers' compensation coverage for the duration of the project, that the coverage shall be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements shall 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.
- 2.13 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor, which entitles the District to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the District.

3.0 PREVAILING WAGE RATES

- 3.1 Attachment A – Davis-Bacon Prevailing Wages for Hidalgo county Type Building & Residential Source: <https://beta.sam.gov/search?index=wd>

4.0 AWARD OF CONTRACT

- 4.1 The Awarded Contractor shall be promptly notified. If a Contractor (a) withdraws his/her proposal within forty-five (45) days after the date of time fixed for the opening of proposals in the Request for Competitive Sealed Proposal, or (b) fails or refuses to execute the Agreement, or other required forms within ten (10) calendar days after the same are presented to him for signature, or (c) fails or refuses to furnish properly executed Performance Bond and required Insurance Certificates within ten (10) calendar days of Notice of Award, the District may award the work to another Contractor(s), if applicable, may call for new proposals.
- 4.2 The Contractor shall be required to (a) submit his/her proposal and Bid Bond; (b) execute contract; and (c) provide Performance and Payment Bonds; and (c) submit certification of required insurances.
- 4.3 Bid Bond shall be forfeited if bid/proposal is withdrawn after the CSP opening, or contract documents are not executed in accordance with the above.

5.0 NOTICE TO PROCEED

- 5.1 The Contractor shall not commence work under this Contract until he receives the written "Notice to Proceed", a Purchase Order, and the Contract is fully executed by all parties.

6.0 COMPLETION TIME

- 6.1 Having thoroughly familiarized himself with the conditions as they exist at the building sites and acquainted himself with the labor supply and the material market, the Awarded Contractor shall state in the proposal that they agree to be substantially complete the work by the date as stated on Proposal Form.
- 6.2 Under the Base Bid (Base Amount Proposal), the Awarded Contractor shall be subject to liquidated damages of **\$500.00** per calendar day for failure to substantially complete the work by due date or as amended by the final signed contract.
- 6.3 The definition of "Substantial Completion," as defined in Article 9.8.1 of the AIA "General Conditions and Supplementary Conditions" bound herein, is as follows: "Substantial Completion is the stage in the progress of the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the District can occupy or utilize the Work for its intended use".

7.0 RETAINAGE AND PROJECT CONTINGENCY

- 7.1 Contracts equaling a total amount of \$400,000.00 or over shall bear a retainage of five (5) percent (%) on each partial disbursement. Contracts totaling less than \$400,000.00 shall bear a retainage of ten (10) percent (%) on each partial disbursement.
- 7.2 Contractor shall provide in final price, a project contingency as stated on the Proposal Form.
- 7.3 Prior to payment of retainage and final payment the Contractors shall furnish a notarized statement certifying that no asbestos, lead and PCBs containing materials have been used in the Project.

ATTACHMENT A

DAVIS-BACON PREVAILING WAGES
FOR HIDALGO COUNTY TYPE BUILDING AND RESIDENTIAL

Source: <https://beta.sam.gov/search?index=wd>

DRAFT

ENGI0178-005 06/01/2014

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 29.00	10.60
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 27.50	10.60

* IRON0084-011 06/01/2019

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 24.42	7.12

PLUM0412-004 04/01/2013

	Rates	Fringes
PLUMBER.....	\$ 31.14	12.43

SUTX2014-031 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 16.17	0.00
CARPENTER.....	\$ 14.21	2.22
CEMENT MASON/CONCRETE FINISHER....	\$ 12.46	0.00
ELECTRICIAN.....	\$ 18.44	4.53
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 11.54	2.17
IRONWORKER, REINFORCING.....	\$ 12.01	0.00
IRONWORKER, STRUCTURAL.....	\$ 15.04	4.34
LABORER: Common or General.....	\$ 8.00	0.00
LABORER: Mason Tender - Brick....	\$ 10.00	0.00
LABORER: Mason Tender -		

Cement/Concrete.....	\$ 10.89	0.96
LABORER: Pipelayer.....	\$ 11.00	3.47
LABORER: Roof Tearoff.....	\$ 10.06	0.00
OPERATOR:		
Backhoe/Excavator/Trackhoe.....	\$ 14.04	1.01
OPERATOR: Bobcat/Skid		
Steer/Skid Loader.....	\$ 13.93	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22	0.34
OPERATOR: Forklift.....	\$ 14.83	0.00
OPERATOR: Grader/Blade.....	\$ 10.00	0.00
OPERATOR: Loader.....	\$ 12.87	0.70
OPERATOR: Mechanic.....	\$ 17.00	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03	0.00
OPERATOR: Roller.....	\$ 12.70	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 11.27	0.00
PIPEFITTER.....	\$ 15.22	3.16
ROOFER.....	\$ 11.42	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 18.40	2.12
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 21.13	6.53
TILE FINISHER.....	\$ 11.22	0.00
TILE SETTER.....	\$ 12.15	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57

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

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

Survey Rate Identifiers

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

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

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

A UAVG rate will be updated once a year, usually in January of

each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material,

etc.) that the requestor considers relevant to the issue.

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

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

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

=====

END OF GENERAL DECISION

"

DRAFT

PROPOSAL

TO OWNER:

The undersigned, as bidders, declared that the only person or parties interested in this proposal as principals are those named herein, that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the form of contract, Notice to Contractors, specifications and the plans thereon referred to, and has carefully examined the locations, and conditions and classes or materials of the proposed work; and agrees that he will provide all the necessary labor, machinery, tools, and apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein and according to the requirements of the Engineer/Architect as therein set forth.

The Bidder shall attach to his bid sheet a list of any exceptions to the specifications.

It is understood that the following quantities of work to be done at unit prices are approximately only and are intended principally to serve as a guide in evaluating bids.

It is further agreed that the quantities of work to be done at unit prices and materials to be furnished, may be increased or diminished as may be considered necessary, in the opinion of the Engineer/Architect, to complete the work fully as planned and contemplated, and that all quantities of the work, whether increased or decreased, are to be performed at the unit prices set forth below except as provided for in the specifications.

It is further agreed that lump sum prices may be increased to cover additional work ordered by the Engineer/Architect, but not shown on the plans or required by the specifications, in accordance with the provisions of the General Conditions. Similarly, they may be decreased to cover deletion of work so ordered.

The bid security accompanying this proposal shall be returned to the bidder, unless in case of the acceptance of the proposal the bidder shall fail to execute a contract and file a performance bond and payment bond within the ten (10) days after its acceptance, in which case the bid security shall become the property of the OWNER, and shall be considered as a payment for damages due to delay and other inconveniences suffered by the Owner on account of such failure of the bidder. It is understood that the Owner reserves the right to reject any and all bids.

PROPOSAL FORM

PROJECT NO.: 2021-064 McAllen ISD Tennis Court Improvements Resurfacing Project - Memorial High School

PLACE: McAllen Independent School District, Purchasing Services, 2000 N. 23rd St., McAllen, Texas 78501

CSP DEADLINE DATE: October 8, 2020

SUBMISSION TIME: 3:00:00 PM (Central Time)

Pursuant to and in compliance with the Request for Cooperative Quote and the proposed Contract Solicitation Documents, prepared by McAllen ISD relating to the above referenced project, the undersigned, having become thoroughly familiar with the terms and conditions of the proposed Contract Solicitation Documents and with local conditions affecting the performance and costs of the work at the place where the work is to be completed, and having fully inspected the site in all particulars, hereby proposes and agrees to fully perform the work within the time stated and in strict accordance with the proposed Contract Solicitation Documents, and addenda, thereto, including furnishing of any and all labor and materials for all General Construction and Site Work, for the following sum of money:

CONFIRMATION OF ADDENDUMS: _____ #1 _____ #2 _____ #3 _____ #4 _____ None
Received

ENGINEER’S ESTIMATE OF QUANTITIES – APPROXIMATE ONLY:

BID

All labor, materials, services and equipment necessary for completion of the work shown on the drawings and in the specifications. All divisions included, minus alternates.

<u>DESCRIPTION</u>	<u>ITEM QUANTITY</u>	<u>UNIT PRICE</u>	<u>ITEM TOTAL</u>
1. Resurface and Restripe Existing Tennis Courts (Including practice area)	8 EA @	\$ _____	= \$ _____
2. Replace Wind Screens	Lump 1 Sum @	\$ _____	= \$ _____
3. Replace Nets, Net Posts and Net Tightener Mechanisms	8 EA @	\$ _____	= \$ _____
4. Owner Contingency	Stated Amount @	\$ 10,000.00	= \$ 10,000.00
Total Amount Bid:			\$ _____

Number of calendar days to complete _____.

The undersigned agrees, unless hereinafter stated otherwise to furnish all materials as shown and specified in the Plans and Specifications.

Project Contingency is \$10,000 which shall be added to the proposed Project Cost. Contractor(s) shall include contingency amount(s) in his/her Total Amount Bid. The District may choose to select any single item or any combination of item(s), to be awarded to a single contractor and/or multiple contractors.

1. If awarded this Contract, the undersigned will execute a satisfactory Construction Contract, Performance Bond(s), Labor and Material Payment Bond(s) and proof of insurance coverage, with the Owner for the entire work as per the Contract Documents within ten (10) days after notice of award. It is agreed that this proposal is subject to the Owner’s acceptance for a period of forty-five (45) days from the date of opening.

2. The district has a critical need for substantial completion by **January 15, 2021**. If the project begins on **November 12, 2020** construction is to be completed within **60** calendar days.

***Specify the number of calendar days that you can substantially complete the project:**
 calendar days.

The undersigned affirms that the information provided herein is true and sufficiently complete so as not to be misleading and has the authority to bind the represented company to a contract.

_____	_____	_____	
Company Name	Title of Official	Printed Name of Official	
_____	_____	_____	_____
Phone Number	E-Mail Address	Signature of Official	Date

DRAFT

ATTACHMENT B
W-9 – REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

DRAFT

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

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.		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) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> 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. <input type="checkbox"/> Other (see instructions) ▶ _____		
	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 ▶
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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

For this type of account:	Give name and EIN of:
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.

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ATTACHMENT C
CONFLICT OF INTEREST QUESTIONNAIRE

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CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

ATTACHMENT D
SPECIAL PROVISIONS

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SPECIAL PROVISIONS

1. It shall be the Contractor's responsibility to locate underground utilities, whether shown or not shown on the drawings, sufficiently in advance of operations to preclude damage to same.
2. Water, sewer, or other utility services shall not be interrupted. Any damages to existing utilities will be Contractor's responsibility.
3. In the event of damage to underground facilities, whether shown or not shown in the drawings, the Contractor shall make the necessary repairs to place the facilities back in service at no increase in the Contractor's price and all such repairs shall conform to the requirements of the company or agency servicing the facility.
4. The Contractor shall exercise extra care to prevent damage to all other structures in the area including buildings, fence, roads, pipelines, utilities, etc., whether publicly or privately owned.
5. Until acceptance by the Engineer of any part or all of the construction, as provided for in the plans and these specifications, it shall be under the charge and care of the contractor, and he shall take every necessary precaution against injury or damage to any part of the work. The Contractor shall rebuild, repair, restore and make good, at his own expense, all injuries or damage to any portion of the work before its completion and acceptance.
6. In case the Contractor deems extra compensation is due him for proposed work not covered in the contract, the Contractor shall notify the Engineer in writing of his claim for such extra compensation before he begins the work. Failure on the part of the Contractor to give such notification shall constitute a waiver of claim for such extra compensation. The Contractor shall not proceed until a written Change Order is approved by the Owner, Engineer and Contractor.
7. Upon failure of the Contractor to satisfactorily repair or to remove and replace rejected work or materials immediately after receiving formal notice from the Engineer, the Owner may recover for such defective work or materials on the Contractor's bond, or by action a court having proper jurisdiction over such matters, or may employ labor and equipment and satisfactorily repair or remove and replace such work and charge the cost of the same to the Contractor, which cost will be deducted from any money due him from this contract.
8. Prospective bidders should make a careful examination of the project site.
9. Contractor shall review his overall method and schedule of construction with the School District prior to construction for proper coordination of inspection.
10. The Contractor shall repair all asphalt pavement, concrete curb, gutter, sidewalk, drainage structures, fences and landscaped areas damaged during construction.
11. The Contractor shall at all times provide access to the building facilities.
12. No open trenches or excavation shall be left open overnight.
13. All construction must be barricaded at all times in order to insure the safety of the students and staff. No construction shall be allowed prior to the work zone being barricaded and approved by the School District.

14. The Contractor shall contact the District's Executive Director for Facilities, Maintenance & Operations, Ruben Treviño (956) 632-3200 prior to start of construction in order to coordinate construction within the site.
15. The wind screens for the fencing along the perimeter of the Tennis Courts must be as manufactured by LISCO Custom Manufactured Athletic Equipment.
(800-322-5126)
16. Prior to applying the final color surface coating to the tennis courts, the Contractor shall coordinate with the School District the color scheme to be used for the courts.
17. The Contractor shall visit to inspect existing conditions with regard to the scope of work prior to submitting a bid for the work.
18. Work is to be performed by personnel and companies with experience in applying tennis court surfacing with references available upon request.
19. Materials and application method must be system tested and approved by the manufacturer of the surfacing materials.
20. Surfacing to be a complete system inclusive of all coatings necessary for a complete and finished job. System and all included components and coatings to be by a single manufacturer.
21. All components of the surfacing system to be applied in strict accordance with manufacturer's requirements and recommendations.
22. Contractor to furnish manufacturer's printed instructions for application of materials prior to any work being performed.
23. The Contractor to provide color and cards of manufacturer's standard colors to Engineer for Owner's selection.
24. No phase of this application shall take place unless both ambient and material temperatures are above 50° F (10 degrees C); nor when rain is imminent or falling; nor when conditions are otherwise unsuitable.
25. The installer of the tennis court surfacing shall guarantee in writing that the synthetic surfaces will be free of material and installation defects for a period of one (1) year from the date of acceptance by the Owner. The contractor shall replace defective work or materials at no cost to the Owner during the one (1) year guarantee period.
26. Tennis Court Resurfacing products to be World Class Tennis Court Surfacing products.
27. Surface colors to be selected by the Owner prior to application of color schemes.
28. The Contractor shall carefully examine all surfaces and conditions for the application of the tennis court surfacing system. The Contractor shall correct all defects before proceeding with the work.

29. The Contractor shall examine substrate for conditions which will adversely affect any component of this system. Application of any work, under this contract, will be considered as evidence of acceptance of the installation and its approval by the Contractor.
30. Clean all existing surfaces to be resurfaced, of dust, dirt, debris and loose materials. Cracks shall be blown clean with an air compressor, loose or flaked materials shall be removed with grinding equipment. High pressure water can also be used to clean and prepare surfaces. Repair cracks and other surface defects in strict accordance with manufacturer's recommendations.
31. All details of installation to conform to manufacturer's recommendations.
32. Contractor to obtain inspection and approval of the Engineer of the court surfacing application prior to painting and striping.
33. Contractor to apply line paint after finish coat has been allowed to dry as per manufacturer's recommendations. Lines shall be 2" wide, white. Lines to be accurately located as indicated on the Drawings and in conformance with U.I.L. guidelines for singles and doubles court. Lines shall be straight with sharp, uniform edges.
34. Contractor shall not paint in wet or windy conditions.
35. Contractor to request inspection of the final installation with the Engineer and Owner. The Contractor shall correct any deficiencies discovered and shall remove materials foreign to the finish application and clear the site of construction debris.
36. Prior to project closeout, Contractor to provide to Engineer and Owner (in triplicate) manufacturer's written procedures and guideline for surfacing maintenance.
37. Limits of construction and construction staging area to be in the vicinity of the tennis courts to be resurfaced. The Contractor shall coordinate with Engineer to determine staging area for construction operations and limits of construction at each school campus prior to moving in.

SECTION 01005 DEFINITIONS AND TERMINOLOGY

PART 1 - GENERAL

1.01 SPECIFICATION TERMINOLOGY

- A. "Certified" used in context with materials and equipment means the material and equipment has been tested and found by a nationally recognized testing laboratory to meet specification requirements, or nationally recognized standards if requirements are not specified, and is safe for use in the specified manner. A nationally recognized testing laboratory must periodically inspect production of the equipment and the equipment must bear a label, tag, or other record of certification.
- B. "Certified" used in context with labor performance or ability to install materials and equipment means that the abilities of the proposed installer have been tested by a representative of the specified testing agency authorized to issue certificates of competency and has met the prescribed standards for certification.
- C. "Certified" used in context with test reports, payment requests or other statements of fact means that the statements made on the document are a true statement as attested to by the certifying entity.
- D. "Furnish" means to supply, deliver and unload materials and equipment at the project site ready to install.
- E. "Indicated" means graphic representations, notes, or schedules on drawings, or other requirements in Contract Documents. Words such as "shown", "noted", "scheduled", are used to help locate the reference. No limitation on the location is intended unless specifically noted.
- F. "Install" means the operations at the project site including unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, training and similar operations required to prepare the materials and equipment for use, verify conformance with Contract Documents and prepare for acceptance and operation by the Owner.
- G. "Installer" means an entity engaged by Contractor, either as an employee, subcontractor, or sub-subcontractor to install materials and/or equipment. Installers are to have successfully completed a minimum of five projects similar in size and scope to this project, have a minimum of five years of experience in the installation of similar materials and equipment, and comply

with the requirements of the authority having jurisdiction.

- H. “Labeled” means equipment that embodies a valid label, symbol, or other identifying mark of a nationally recognized testing laboratory such as Underwriters Laboratories, Inc. and production is periodically inspected in accordance with nationally recognized standards or tests to determine safe use in a specified manner.
- I. “Listed” means equipment is included in a list published by a nationally recognized laboratory which makes periodic inspection of production of such equipment and states that such equipment meets nationally recognized standards or has been tested and found safe for use in a specified manner.
- J. “Manufacturer” means an entity engaged by Contractor, as a subcontractor, or sub-subcontractor to furnish materials and/or equipment. Manufacturers are to have a minimum of five years experience in the manufacture of materials and equipment similar in size, capacity and scope to the specified materials and equipment.
- K. “Perform” means to complete the operations necessary to comply with the Contract Documents.
- L. “Project site” means the space available to perform the work, either exclusively or in conjunction with others performing construction at the project site.
- M. “Provide” means to furnish and install materials and equipment.
- N. “Regulations” means laws, statutes, ordinances, and lawful orders issued by authorities having jurisdiction, as well as, rules, conventions, and agreements within the construction industry that control performance of work, whether they are lawfully imposed by authorities having jurisdiction or not.
- O. “Specified” means written representations in the bid documents or the technical specifications.

1.02 SPECIFICATION SENTENCE STRUCTURE

- A. Specifications are written in modified brief style. Requirements apply to all work of the same kind, class, and type even though the word “all” is not stated.
- B. Simple imperative sentence structure is used which places a verb as the first word in the sentence. It is understood that the words “furnish”, “install”, “provide”, or similar words include the meaning of the phrase “The Contractor shall.’ before these words.

- C. It is understood that the words “directed”, “designated”, “requested”, “authorized”, “approved”, “selected”, or similar words include the meaning of the phrase “by the Engineer” after these words unless otherwise stated. Use of these words does not extend the Engineer’s responsibility for construction supervision or responsibilities beyond those defined in the General Conditions.
- D. “At no additional cost to Owner”, “with no extra compensation to Contractor”, “At Contractor’s own expense”, or similar words mean that the Contractor will perform or provide specified operation of work without any increase in the Contract Amount. It is understood that the cost for performing all work is included in the amount bid and will be performed at no additional cost to the Owner unless specifically stated otherwise.

1.03 DOCUMENT ORGANIZATION

- A. Organization of Contract Documents is not intended to control or to lessen the responsibility of the Contractor when dividing work among subcontractors, or to establish the extent of work to be performed by any trade, subcontractor or vendor. Specification or details do not need to be indicated or specified in each specification or drawing. Items shown in the contract documents are applicable regardless of location in the Contract Documents.
- B. Standard paragraph titles and other identifications of subject matter in the specifications are intended to aid in locating and recognizing various requirements of the specifications. Titles do not define, limit, or otherwise restrict specification text.
- C. Capitalizing words in the text does not mean that these words convey special or unique meanings or have precedence over other parts of the Contract Documents. Specification text governs over titling and it is understood that the specification is to be interpreted as a whole.
- D. Drawings and specifications do not indicate or describe all of the work required to complete the project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Engineer. Provide any work, materials or equipment required for a complete and functional system even if they are not detailed or specified.

1.04 INTERPRETATIONS OF DOCUMENTS

- A. Comply with the most stringent requirements where compliance with two (2) or more standards is specified, and they establish different or conflicting requirements for minimum quantities or quality levels, unless Contract Documents indicate otherwise.

1. Quantity or quality level shown or indicated shall be minimum to be provided or performed in every instance.
 2. Actual installation may comply exactly with minimum quality indicated, or it may exceed that minimum within reasonable limits.
 3. In complying with these requirements, indicated numeric values are minimum or maximum values, as noted, or appropriate for context of requirements.
 4. Refer instances of uncertainty to the Engineer for a decision before proceeding.
- B. Provide materials and equipment comparable in quality to similar materials and equipment incorporated in the project or as required to meet the minimum requirements of the application if the materials and equipment are shown in the drawings but are not included in the specifications.

1.05 REFERENCE STANDARDS

- A. Comply with applicable construction industry standards as if bound or copied directly into the Contract Documents regardless of lack of reference in the Contract Documents. Apply provisions of the Contract, Documents where Contract Documents include more stringent requirements than the referenced standards.
1. Standards referenced directly in the Contract Documents take precedence over standards that are not referenced but recognized in the construction industry as applicable.
 2. Comply with standards not referenced but recognized in the construction industry as applicable for performance of the work except as otherwise limited by the Contract Documents. The Engineer determines whether code or standard is applicable, or which of several are applicable.
- B. Consider a referenced standard to be the latest edition with supplements or amendments when a standard is referred to in an individual specification section but is not listed by title and date.
- C. Trade association names and title of general standards are frequently abbreviated. Acronyms or abbreviations used in the Contract Documents mean the recognized name of trade association, standards generating organization, authority having jurisdiction, or other entity applicable in the context of the Contract Documents.
- D. Make copies of reference standards available as requested by Engineer or Owner.

1.06 SUBSTITUTIONS AND EQUAL PRODUCTS

Provide materials and equipment manufactured by the entities specifically listed in each technical specification section. Submit a Contractors Modification Request per Section 01300, SUBMITTALS for substitution of materials and equipment of manufacturers not specifically listed or for materials and equipment that does not strictly comply with the Contract Documents. Contractor may provide “equal” products manufactured by manufacturers other than those specifically listed in the technical specification section unless it is specifically stated that only the materials and equipment of the specified manufacturers shall be provided. Provide a request for approval of proposed equals per Section 01300 SUBMITTALS for any materials or equipment not specifically listed. Submit a Contractors Modification Request for substitution of materials and equipment of other manufacturers or for materials and equipment that does not strictly comply with the Contract Documents. A Field Order or Change Order will be issued if the contract modification is approved.

END OF SECTION

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SECTION 01040 PROJECT ADMINISTRATION

PART 1- GENERAL

1.01 WORK INCLUDED

- A. Administer contract requirements to construct the project. Provide documentation per the requirements of this Section. Provide information as requested by the Engineer/Architect or Owner concerning this project.

1.02 SUBMITTALS

- A. Submittals shall be in accordance with Section 01300, SUBMITTALS.

1.03 COMMUNICATION DURING THE PROJECT

- A. The Engineer is to be the first point of contact for all parties on matters concerning this project.
- B. The Engineer will coordinate correspondence concerning:
 - 1. Submittals, including requests for payment
 - 2. Clarification and interpretation of the Contract Documents
 - 3. Contract modifications
 - 4. Observation of work and testing
 - 5. Claims
- C. The Engineer will normally communicate only with the Contractor. Any required communication with suppliers or subcontractors shall only be with the direct involvement of the Contractor.
- D. Written communications are to be directed to the Engineer at the address indicated in the Pre-construction Conference. Communications should include as a minimum:
 - 1. Name of the Owner
 - 2. Project name
 - 3. Contract title
 - 4. Project number
 - 5. Date
 - 6. A reference statement

- E. Submit communications on the forms referenced in this Section or in Section 01300. SUBMITTALS.

1.04 PROJECT MEETINGS

A. Pre-construction Conference

1. Attend a pre-construction meeting.
2. The location of the conference will be determined by the Owner.
3. The time of the meeting will be determined by the Owner but will be after the Notice of Award is issued and not later than fifteen (15) days after the Notice to Proceed is issued or can be issued at the Pre-Construction Conference.
4. Meeting will be attended by the Owner, Engineer and the Contractors project manager and superintendent. Meeting may be attended by representative of utility companies and representatives from major subcontractors and suppliers.
5. Contractor should provide and be prepared to discuss:
 - a. Preliminary construction schedule per Section 01310, PROGRESS SCHEDULE.
 - b. Preliminary Submittal Schedule.
 - c. Schedule of values and anticipated schedule of payments.
 - d. List of Suppliers and Subcontractors.
 - e. Contractor's organizational chart as it relates to this project.
 - f. Letter indicating the agents of authority for the Contractor and the limit of that authority with respect to the execution of legal documents.

B. Periodical Progress Meetings

1. Attend meetings with the Engineer and Owner.
 - a. Meet on a Monthly basis or as requested by the Engineer to discuss the project.
 - b. Meet at the project site or other location as designated by the Engineer.
 - c. Contractors superintendent and other key personnel are to attend the meeting. Other individuals may be requested to attend to discuss specific matters.
2. Provide information as requested by the Engineer or Owner concerning

this project.

- a. Prepare to discuss:
 - 1) Status of overall project schedule.
 - 2) Contractors detailed schedule for the next month.
 - 3) Anticipated delivery dates for equipment.
 - 4) Coordination with the Owner.
 - 5) Status of submittals.
 - 6) Information or clarification of the Contract Documents.
 - 7) Claims and proposed modifications to the contract.
 - 8) Field observations, problems, or conflicts.
 - 9) Maintenance of quality standards.
 - b. Notify the Engineer of any specific items to be discussed a minimum of one (1) week prior to the meeting.
3. Review minutes of meetings and notify the Engineer of any discrepancies within ten (10) days of the date of the memorandum.
 - a. Following that date, the minutes will stand as shown or as corrected.
 - b. Corrections will be reflected in the minutes of the following meeting.
 - c. Each item of business shall be numbered to indicate the meeting number and the item number. Items discussed will be documented and old business items will remain on minutes of subsequent meetings until the item is resolved.

1.05 REQUESTS FOR INFORMATION

- A. Submit Request for Information (RFI) to the Engineer to obtain additional information or clarification of the Contract Documents.
 1. Submit a separate RFI for each item.
 2. Attach adequate information to permit a written response without further clarification. Engineer will return requests which do not have adequate

information for additional information.

3. A response will be made when adequate information is provided. Response will be made on the RFI form or in attached information.
 4. Assign a number to the RFI and sequence number in chronological order.
- B. If the RFI indicates that a contract modification is required, the Engineer will initiate a Proposed Contract Modification (PCM) per Section 1.07.

1.06 NOTIFICATION BY CONTRACTOR

- A. Notify the Engineer of:
1. Need for testing.
 2. Intent to work outside regular working hours.
 3. Request to shut down facilities or utilities.
 4. Proposed utility connections.
 5. Required observation by Owner or inspection agencies prior to covering work.
- B. Notification must be provided in time for Owner and Engineer to respond appropriately to the notification.
- C. Use "Notification By Contractor" form. Form can be requested from Owner or Engineer.

1.07 REQUESTS FOR MODIFICATIONS

- A. Submit a request to the Engineer for any change in the Contract Documents or approval of any deviations from the Contract Documents.
1. Use the "Contractors Modification Request" (CMR) form. Contractor's own form can also be submitted pending completeness of required information.
 - a. Assign a number to the CMR when issued and sequence number in chronological order.
 - b. Include with the CMR:
 - 1) A complete description of the proposed modification.

- 2) The reason the modification is requested.
 - 3) A detailed breakdown of the cost of the change (necessary only if the modification requires a change in contract amount). The itemized breakdown is to include:
 - (a) list of materials and equipment to be installed,
 - (b) man hours for labor by classification,
 - (c) equipment used in construction,
 - (d) consumable supplies, fuels, and materials,
 - (e) royalties and patent fees,
 - (f) bonds and insurance,
 - (g) overhead and profit,
 - (h) field office costs,
 - (i) home office cost,
 - (j) and other items of cost.
 - 4) A revised schedule indicating the effect on the critical path for the project and a statement of the number of days the project may be delayed by the modification.
2. A CMR is required for field changes.
 - a. Request must be made a minimum of two (2) weeks in advance of performing the work affected.
 - b. Request for field changes will be submitted to the Engineer.
 3. A CMR is required for all substitutes or deviations from the Contract Documents.
 4. Engineer will evaluate the request for a contract modification.
- B. Owner will initiate changes through the Engineer.
1. Engineer will prepare a description of the proposed modifications to the Contract Documents.

2. Engineer will use the "Proposed Contract Modification" form or own form. Engineer will assign a number to the PCM when issued and keep in numerical order throughout project.
 3. Return request with a proposal to incorporate the requested change. Include a breakdown of costs into materials and labor in sufficient detail to allow evaluation by the Engineer.
- C. If a contract modification is required, the Engineer will issue a Field Order or a Change Order.
1. Modifications to the contract can only be made by a Field Order or a Change Order.
 2. Changes in the project will be documented by Field Order or by a Change Order.
 3. Field Orders may be issued by the Engineer for contract modifications that do not change the contract amount or contract time.
 4. Any modifications that require a change in contract amount or contract time can only be approved by Change Order.
 - a. CMR's and proposals issued by the Contractor in response to a PCM will be evaluated by the Engineer.
 - b. If change order is recommended, the Engineer will prepare the change order.
 - c. The Change Order will be sent to the Contractor for execution with a copy to the Owner recommending approval.
 - d. Change Orders can only be approved by the Owner.
 - 1) Work performed on the proposed contract modifications prior to the approval of the Change Order will be performed at the Contractor's risk.
 - 2) No payment will be made for work on Change Orders until approved by the Owner.
- D. The Contractor may be informed that the proposed modification is not approved and construction is to proceed in accordance with the Contract Documents.

1.08 EMERGENCY WORK

- A. Notify the Owner and Engineer immediately of any additional work that must be performed to prevent injury or damage to existing structures, facilities, utilities, or work in place.
- B. When possible, obtain authorization from the Owner before proceeding.

1.09 CLAIMS

- A. Do not perform any work which is considered to be outside the scope of the Contract Documents without an approved Change Order.
- B. File notice of claims with the Engineer within 10 days of the event giving rise to the claim.
- C. Provide full documentation within 30 days of the notice.
- D. Items not reported within the stipulated time will not be considered.
 - 1. Failure to notify the Owner of potential claims does not allow the Owner to take alternative action to prevent the Contractor from incurring the cost for the item or to perform the work in a different manner.
 - 2. Failure to notify the Owner does not allow operations to be monitored for the actual cost of performing the work.
- E. When full documentation has been received by the Engineer, the claim will be reviewed in the context of the Contract Documents.
 - 1. If the claim is valid, a Change Order will be prepared and payment of the Change Order will be recommended.
 - 2. If the claim is not valid, then the claim will be denied with an explanation of the reasons.
 - 3. Should the Contractor disagree with the decision of the Engineer, the Contractor may refuse to do the work.
 - a. If the Owner insists that the work be done, proceed with the work on a time and materials basis.
 - b. The validity of the claim will be resolved at a later time in accordance with the Contract Documents.

1.10 RECORD DOCUMENTS

A. Maintain at the site one (1) complete record copy of:

1. Drawings
2. Specifications
3. Addenda
4. Contract modifications
5. Approved shop drawings and record data
6. One (1) set of construction photographs
7. Test records
8. Clarifications and other information provided in RFI responses.

B. Marking Drawings

1. Label each document as "Project Record" in large printed letters.
2. Record information as construction is being performed.
 - a. Do not conceal any work until the required information is recorded.
 - b. Mark drawings to record actual construction, including the following:
 - 1) Depths of various elements of the foundation in relation to finished first floor datum or the top of walls.
 - 2) Horizontal and vertical locations of underground utilities and appurtenances constructed and existing utilities encountered during construction.
 - 3) Location of internal utilities and appurtenances concealed in the construction. Make reference to permanent structure on the surface. Include the following equipment:
 - (a) Piping
 - (b) Ductwork

- (c) Equipment and control devices requiring periodic maintenance or repair
 - (d) Valves, unions, traps, and tanks
 - (e) Services entrance
 - (f) Feeders
 - (g) Outlets
- 4) Changes of dimension and detail.
 - 5) Changes made by Field Order and Change Order.
 - 6) Details not on the original Contract Drawings.
- c. Mark specifications and addenda to record materials and the equipment provided.
 - 1) Record manufacturer name, trade name, catalog number, and each supplier (with address and phone number) of each product and item of equipment actually installed.
 - 2) Record changes made by Field Order and Change Order.
 - d. Mark additional work or information in erasable pencil.
 - 1) Use red for new or revised indication.
 - 2) Use purple for work deleted or not installed (lines to be removed).
 - 3) Highlight in yellow the items constructed per the plans.
 - e. Submit record documents to Engineer for review and acceptance 30 days prior to final completion of the project.
 - 1) Provide one (1) set of marked up drawings.
 - 2) Provide one (1) set of specifications.
 - f. Partial Payment Requests will not be recommended for payment if record documents are found to be: incomplete or not in order. Final payment will not be recommended without record documents.

PART 2- PRODUCTS (NOT INCLUDED)

PART 3- EXECUTION (NOT INCLUDED)

END OF SECTION

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SECTION 01300 SUBMITTALS

1.00 PART 1 - GENERAL

1.01 WORK INCLUDED

- A. Contractor shall submit documentation as required by the Contract Documents and as reasonably requested by the Owner and Engineer to:
1. Record the products incorporated into the Project for the Owner.
 2. Provide information for operation and maintenance of the Project.
 3. Provide information for the administration of the Contract.
 4. Allow the Engineer to advise the Owner if products proposed for the project by the Contractor conform, in general, with the design concepts of the Contract Documents.
- B. Contractors responsibility for full compliance with the Contract Documents is not relieved by the Engineers review of submittals, Contract modifications may only be approved by Change Order or Field Order.

1.02 CONTRACTORS RESPONSIBILITIES

- A. Review all submittals prior to submission.
- B. Determine and verify:
1. Field measurements.
 2. Field construction requirements.
 3. Location of all existing structures, utilities and equipment related to the submittals.
 4. Submittals are complete for their intended purpose.
 5. Conflicts between the submittals related to the various subcontractors and suppliers have been resolved.
 6. Quantities and dimensions shown on the submittals.
- C. Submit information per the procedures described in this section and the detailed specifications.

D. Furnish the following submittals:

1. As specified in the attached Submittal Schedule.
2. Schedules, data and other documentation as described in detail in this section or referenced in the General Conditions.
3. Submittals as required in the detailed specifications.
4. Submittals not required will be returned without Engineer's review.

E. Submit a schedule indicating the date submittals will be sent to the Engineer and proposed dates that the product will be incorporated into the project. Make submittals promptly in accordance with the schedule so as to cause no delay in the project.

1. Submittals shall be sent to Engineer allowing a reasonable time for delivery, review and marking submittals. Time for review is to include time for resubmission if necessary and to allow adequate time for the ordering, fabrication, and delivery of the product.
2. Schedule submittal to provide all information for interrelated work at one time. No review will be performed on submittals requiring coordination with other submittals. Engineer will return submittals for resubmission as a complete package.

F. Installation of any products prior to the approval of shop drawings is done at the Contractors risk. Products not meeting the requirements of Contract Documents are defective and may be rejected at the Owners option.

G. Payment will not be made for products for which submittals are required until the submittals have been approved. Payment will not be made for products for which shop drawings or samples are required until these are approved by the Engineer.

1.03 QUALITY ASSURANCE

A. Submit legible, accurate, complete documents presented in a clear, easily understood manner. Submittals not meeting this criteria will be returned without review.

B. Demonstrate that the proposed products are in full and complete compliance with the design criteria and requirements of the Contract Documents including drawings and specifications as modified by Addenda, Field Orders and Change Orders.

- C. Furnish and install products that fully comply with the information included in the submittal.
- D. Review and approve submittals prior to submitting them to the Engineer for review. Submittals will not be accepted from subcontractors, suppliers, or anyone other than the Contractor.

1.04. OPERATION AND MAINTENANCE MANUAL

- A. The Contractor shall obtain from the various Subcontractors various operation and maintenance data, replacement parts lists, maintenance schedule requirements, etc., and bind the information into a reference manual. Two sets shall be turned over to the Engineer/Architect prior to request for final payment.
- B. Operation and maintenance manuals shall be neatly bound with each trade so indexed. In some cases, approved shop drawings and submittals may suffice for use in this regard. Equipment parts lists for replacement purposes shall be included wherever possible.

1.05 SUBMITTAL PROCEDURES

- A. Deliver submittals to the Engineer.
- B. Assign a number to the documents originated to allow tracking of the submittal during the review process.
 - 1. Assign a number consisting of a prefix, a sequence number, and a letter suffix. Prefixes shall be as follows:

Prefix	Description	Originator
CO	Change Order	Contractor
CTR	Certified Test Report	Contractor
EIR	Equipment Installation Report	Contractor
FO	Field Order	Engineer
NBC	Notification by Contractor	Contractor
O&M	Operation & Maintenance Manuals	Contractor
PCM	Proposed Contract Modification	Engineer
PR	Payment Request	Contractor
PP	Project Photographs	Contractor
RD	Record Data	Contractor
RFI	Request for Information	Contractor
SAM	Sample	Contractor
SD	Shop Drawing	Contractor
SCH	Schedule of Progress	Contractor

2. Issue sequence numbers in chronological order for each type of submittal.
 3. Issue numbers for re-submittals that have the same number as the original submittal followed by an alphabetical suffix indicating the number of times the same submittal has been sent to the Engineer for processing. For example: SD-025-A represents a shop drawing that is the twenty-fifth submittal of his type and is the second time this submittal has been sent for review.
 4. Clearly note the submittal number on each page or sheet of the submittal.
 5. Correct assignment of numbers is essential since different submittal types are processed in different ways.
- D. Submit documents with uniform markings and page sizes.
1. Paper size shall allow for ease of reproduction.
 - a. Submit documents on 8-1/2" X 11" paper where practical.
 - b. Use 11" X 17" paper for larger drawings and schematics.
 - c. Use full size blue-line sheets for fabrications and layout drawings. Reproducible drawings may be submitted in lieu of blue-lines.
 2. Mark submittals to:
 - a. Indicate Contractor's corrections in green.

- b. Highlight items pertinent to the products being furnished in yellow and delete items that are not when the Manufacturers standard drawings or information sheets are provided.
 - c. Cloud items and highlight in yellow where selections by the Engineer or Owner are required.
 - d. Mark dimensions with the prefix FD to indicate field verified dimensions on the drawings.
 - e. Provide a blank space 8" x 3" for Contractor's and Engineers stamp.
- E. Mark submittals to reference the drawing number and/or section of the specifications, detail designation, schedule or location that corresponds with the data submitted. Other identification may also be required, such as layout drawings or schedules to allow the reviewer to determine where a particular product is to be used.
- F. The number of copies of each submittal to be sent by the Contractor and the number of copies of each submittal to be returned are:

Prefix	Description	No. of Copies Sent	No. of Copies Returned
CO	Change Order	2	1
CTR	Certified Test Report	2	0
EIR	Equipment Installation Report	2	0
NBC	Notification by Contractor	2	1
O&M	Preliminary O&M Manuals	2	1
O&M	Final O&M Manuals	4	0
PR	Payment Request	2	1
PP	Project Photographs (including videotapes)	2	0
RD	Record Data	2	0
RFI	Request for Information	2	1
SAM	Sample	2	0
SD	Shop Drawings	3	1
SCH	Schedule of Progress	2	0

1.06 REVIEW PROCEDURES

- A. Priority submittals will be reviewed before other submittals for this project which have been received but not reviewed.

1.07 REQUIREMENTS

- A. Certifications. Warranties and Service Agreements include documents as specified in the detailed specifications. as shown in the submittal schedule or as follows:
1. Certified Test Reports (CTR) - A report prepared by an approved testing agency giving results of tests performed on products to indicate their compliance with the specifications.
 2. Certification of Local Field Service (CLS) - A certified letter stating that field service is available from a factory or supplier approved service organization located within a 300 mile radius of the project site. List names, addresses, and telephone numbers of approved service organizations on or attach to the certificate.
 3. Extended Warranty (EW) - A guarantee of performance for the product or system beyond the normal one (1) year warranty described in the General Conditions, Issue the warranty certificate in the name of the Project Owner.
 4. Extended Service Agreement (ESA) - A contract to provide maintenance beyond that required to fulfill requirements for warranty repairs, or to perform routine maintenance for a definite period of time beyond the warranty period. Issue the service agreement in the name of the Project Owner.
 5. Certification of Adequacy of Design (CAD) - A certified letter from the manufacturer of the equipment stating that they have designed the equipment to be structurally stable and to withstand all imposed loads without deformation, failure, or adverse effects to the performance and operational requirements of the unit. The letter shall state that mechanical and electrical equipment is adequately sized to be fully operational for the conditions specified or normally encountered by the product's intended use.
 6. Certification of Applicator/Subcontractor (CSQ) - A certified letter stating that the Applicator or Subcontractor proposed to perform a specified function is duly designated as factory authorized and trained for the application of the specified product.
- B. Submit record data to provide information to allow the Owner to adequately identify the products incorporated into the project and allow replacement or repair at some future date.
1. Provide record data for all products. Record data is not required for items

for which shop drawings and/or operations and maintenance manuals are required.

2. Provide information only on the specified products. Submit a Contractor's Modification Request for approval of deviations or substitutions and obtain approval by Field Order or Change Order prior to submitting Record Data.
3. Record data will be received by the Engineer, logged, and provided to Owner for his/her record.
 - a. Record data may be reviewed to see that the information provided is adequate for the purpose intended. Inadequate drawings may be returned as unacceptable.
 - b. Record data is not reviewed for compliance with the Contract Documents. Comments may be returned if deviations from the Contract Documents are noted during the cursory review performed to see that the information is adequate.

1.08 REQUESTS FOR DEVIATION

- A. Submit requests for deviation from the Contract Documents for any product that does not fully comply with the specifications.
- B. Submit request by Contractor's Modification Request (CMR) per Section 01040. PROJECT ADMINISTRATION. Identify the deviations and the reason the change is requested.
- C. Deviations that result in a reduction in cost shall also include the amount of the reduction to the Owner.
- D. A Change Order or Field Order will be issued by the Engineer for deviations approved by the Owner. Deviations from the Contract Documents may only be approved by Change Order or Field Order.

1.09 SUBMITTALS FOR SUBSTITUTIONS

- A. Substitutions are defined as any product that the Contractor proposes to provide for the Project in lieu of the specified product.
- B. If the Contractor desires to submit a manufacturer or product which is not specified, the Contractor must submit the following for consideration of approval of the substitution:
 1. Contractor's Modification Request for deviation from the Contract Documents per Paragraph 1 .07.

2. Prove that the product is acceptable as a substitute. It is not the Engineers responsibility to prove the product is not acceptable as a substitute.
 - a. Indicate on a point by point basis for each specified feature that the product is acceptable to meet the intent of the Contract Documents requirements.
 - b. Make a direct comparison with the specified manufacturers published data sheets and available information. Provide this printed material with the submittal.
 - c. The decision of the Engineer regarding the acceptability of the proposed substituted product is final.
3. Provide a typewritten certification that, in making the substitution request. The Contractor:
 - a. Has determined that the substituted product will perform in substantially the same manner and result in the same ability to meet the specified performance as the specified product.
 - b. Will provide the same warranties and/or bonds for the substituted product as specified or as would be provided by the Manufacturer of the specified product.
 - c. Will assume all responsibility to coordinate and modifications that may be necessary to incorporate the substituted product into the project and will waive all claims for additional work which may be necessary to incorporate the substituted product into the project which may subsequently become apparent.
 - d. Will maintain the same time schedule as for the specified product.

1.10 GUARANTEES

- A. Warranties and guarantees shall be submitted as required by the Contract Documents and submitted with the shop drawings or record data.

1.11 RESUBMISSION REQUIREMENTS

- A. Make all corrections or changes in the submittals required by the Engineer and resubmit until approved.
- B. Need for more than one resubmission or any other delay of obtaining Engineer's review of submittals, will not entitle the Contractor to an extension of Contract Time. All costs associated with such delays shall be at the Contractor's expense.

1.12 ENGINEER'S DUTIES

- A. Revise the submittals and return with reasonable promptness.
- B. Affix stamp, indicate approval with or without comments, rejection, and the need for re-submittal.
- C. Distribute documents.

SUBMITTAL SCHEDULE

Spec. No.	Description	S D	S A M	C T R	C L S	E W	E S A	C A D	C S Q	R D	O M	E I R	P P B
01568	Erosion and Sediment Control during Construction									X			
01600	Products							X				X	
01650	Starting Systems										X	X	
01700	Contract Closeout									X			
01730	Operations and Maintenance Manual										X		
02556	Water Transmission Lines and/or Pressure Sewer Lines	X								X			
02570	Sanitary Sewer	X								X			
02575	Paving Repair and Resurfacing									X			
02590	Polyurthane Protective Coating									X			
03300	Cast in Place Concrete									X			
09101	Construction Traffic Control									X			
02223	Trench Protection System									X			
02236	Embankment		X							X			
02601	Flex base		X	X						X			
02610	Prime Coat		X	X						X			
02612	HMAC		X	X						X			

SD - Shop Drawing

SAM - Sample

CTR - Certified Test Report

CLS - Certification of Local Field Service

EW - Extended Warrant

ESA - Extended Service Agreement

PPB - Process Performance Bond

CAD - Certificate of Adequacy of Design

CSQ- Certification of Applicator/ Subcontractor Qualifications

RD - Record Data

OM - Operation and Maintenance Manuals

EIR - Equipment Installation Report

END OF SECTION

SECTION 01310 PROJECT CONTROL SCHEDULE

PART 1 - SCHEDULE REQUIREMENTS PROGRESS SCHEDULE

The work specified in this section includes planning, scheduling and reporting required by the CONTRACTOR. It is expressly understood and agreed that the time of beginning, the rate of progress, and the time of completion of the work are essential elements of this CONTRACT.

- A. The Project Control Schedule (PCS) shall be prepared and maintained by the CONTRACTOR as described in this section.
- B. The PCS shall be the CONTRACTOR'S working schedule and will be used by the CONTRACTOR to plan, organize, and execute the work, record and report actual performance and physical progress, and to show how the CONTRACTOR plans to complete all remaining work as of the beginning of each progress report period (data date).
- C. In addition, the PCS shall provide the OWNER with a tool to monitor and follow the progress of all phases of the work. The PCS shall comply with the various limits imposed by the scope of the work, contractually specified milestones and completion dates included in the contract.
- D. The PCS shall be a Critical Path Method (CPM) schedule, utilizing the Precedence Diagramming Method (PDM).
- E. The PCS must clearly show the sequence and interdependence of activities required for complete performance of the work, beginning with the Contract Start Date (CSD) and concluding with the Contract Completion Date (CCD). The maximum duration of any physical work activity shall not exceed twenty (20) working days unless approved by the OWNER.
- F. The CONTRACTOR shall use a scheduling system capable of handling, processing, printing and plotting data to satisfy all requirements of this section. The scheduling system must be capable of producing project reports and other digital (electronic) data that can be directly read and interpreted by the OWNER.

PART 2 - SUBMITTAL PROCEDURES

The OWNER will schedule and conduct a Preconstruction Conference. At this meeting, the requirements of this section, as they apply to the contract, will be reviewed with the CONTRACTOR. The CONTRACTOR shall be prepared to review and discuss

methodology for the schedule and sequence of operations and labor, equipment and material constraints.

A. PROJECT CONTROL SCHEDULE (PCS)(PRELIMINARY) - within fifteen (15) working days after the Preconstruction Conference, the CONTRACTOR shall submit to the OWNER the Preliminary Project Schedule (PPS), which shall be the basis of the PROJECT CONTROL SCHEDULE (BASELINE), and which will be used to schedule early activities of the project. The PPS shall include a detailed plan of operations for the first sixty (60) calendar days from the Contract Start Date.

The PPS shall be a network diagram or bar chart, utilizing the CONTRACTOR'S WORK BREAKDOWN STRUCTURE showing in detail:

1. Notice of Acceptance of Proposal.
2. Pre-Construction Conference.
3. Contract start date.
4. Mobilization.
5. Submission and approval of key submittals.
6. Procurement of key materials and equipment.
7. All activities occurring or starting within the first sixty (60) calendar days.
8. Milestones and other contractual dates.
9. Contract completion date.

B. Submittal and acceptance of the Preliminary Project Schedule is a condition precedent to the issuance of any initial payment.

C. PROJECT CONTROL SCHEDULE (BASELINE) - within sixty (60) calendar days of the CSD, the CONTRACTOR shall submit, for acceptance by the OWNER, the Project Control Schedule (Baseline). The PCS-Baseline shall represent the CONTRACTOR'S complete plan for the execution of the CONTRACT in accordance with the BID and CONTRACT documents. Although limited technical assistance is available to the CONTRACTOR from the OWNER upon written request and prior to any formal review and/or finalization of the baseline schedule, it is the responsibility of the CONTRACTOR to employ or engage the services of a technically qualified scheduler on this project.

- D. PROJECT CONTROL SCHEDULE (UPDATES) - Once each month, or more often if deemed necessary by the OWNER, the CONTRACTOR shall review and update the PCS to incorporate all current information, including progress, approved adjustments of time and logic, and proposed changes in sequence and logic. All copies of the updated PCS submitted to the OWNER, shall be signed and dated by the CONTRACTOR.
- E. PROJECT CONTROL SCHEDULE (AS-BUILT) - The last PCS update submitted shall be identified as the "As-Built Schedule", and is a condition precedent to issuance of Final Acceptance of the CONTRACT by the OWNER.

PART 3 - DEFINITIONS

The principles and definitions of the terms used herein shall be as set forth in the Associated General Contractors of America (AGC) publication "The Use of CPM in Construction," copyright 1976. Additional definitions are set forth as follows:

- A. Critical Path(s) - shall be defined as the longest path of activities from the Contract Start Date (CSD) to the Contract Completion Date (CCD).
- B. Near Critical Path - shall be defined as those paths of activities having a total float value equal to the total float value of the defined critical path (longest path) plus ten (10) working days.
- C. Activity Codes - are values assigned to schedule activities to organize the Schedule Activities into manageable groups for updating, analyzing, reporting, plotting, and summarizing.
- D. WBS - (Work Breakdown Structure) is a definition of project related activity codes, to be used by the CONTRACTOR to organize the CONTRACTOR'S Project Control Schedule in a manner that facilitates the OWNER'S use of the PCS information.
- E. Constraint - is a restriction imposed on the start, finish or duration of an activity. Project Control Schedule
- F. Data Date - (DD) The date used as the starting point for schedule calculations. For Baselines, the DD is the first day of the project, the CSD date. For subsequent schedule updates, the DD is the first workday of the remainder of the schedule, normally the first calendar day after the schedule close-out date (usually month end).

- G. Total Float - is the amount of time that the start or finish of an activity can be delayed without impacting the Contract Completion Date. Total float is a CALCULATED value.
- H. Free Float - is the amount of time that the start or finish of an activity can be delayed without impacting the early start or finish of a successor activity. Free float is a CALCULATED value.
- I. Lag - is an offset or delay from an activity to its' successor, or from its' predecessor. Lag is physically defined by the scheduler. Lag is NOT CALCULATED.
- J. Open End - is an activity that has either no predecessor or no successor relationships.
- K. Out of Sequence Progress - means that all or a portion of an activity has been completed before the predecessors to the activity are complete.
- L. Percent Complete - the portion of an activity that is complete based on physical measurement of the scope of work included in the activity that has been completed by the CONTRACTOR and accepted by the OWNER.
- M. Target (Baseline) - a different version of the project schedule that can be compared to as the basis for measuring differences between the versions of the project schedule.

PART 4 - PROJECT CONTROL SCHEDULE (BASELINE)

The CONTRACTOR shall be responsible for assuring that all work sequences are logical and the network shows a coordinated plan for the complete performance of the CONTRACT. Failure of the CONTRACTOR to include any element of the work required for the performance of the CONTRACT in the network shall not relieve the CONTRACTOR from completing all work within the time specified for the completion of the CONTRACT. In the event the CONTRACTOR fails to define any element of the work in the network, when the omission or error is discovered by either the CONTRACTOR or OWNER, it shall be corrected by the CONTRACTOR at the next scheduled update or submittal.

- A. The PCS Baseline shall be organized to clearly define separate groups of activities detailing:
 - 1. key submittals,
 - 2. procurement of major materials and equipment,

3. delivery of OWNER furnished materials and equipment,
 4. approvals required by regulatory agencies or other third parties,
 5. plans for all major subcontract work,
 6. access to and availability of all work areas,
 7. identification of interfaces and dependencies with preceding, concurrent, and follow-on contractors,
 8. tests and inspections,
 9. identification of any manpower, material or equipment restrictions.
- B. Relationships shall be defined between the CONTRACTOR'S activities based on the following criteria.

PHYSICAL - relationships occur when a successor activity cannot physically start (or finish) until a predecessor activity completes (or starts). **example: forming before pouring**

SAFETY - defined relationships exist when a successor activity cannot start until a predecessor activity (which may be creating a safety hazard for the successor activity), completes allowing for the start of the successor in a safe environment. **example: completing overhead work before starting work underneath**

RESOURCE - driven relationships occur when a successor activity cannot start until a predecessor activity completes and releases its' resources to work on the successor. **example: form slab # 1 before forming slab # 2 when allocating one crew to a job**

PREFERENTIAL - logic occurs when a contractor prefers to perform the work in a given sequence. **example: completing painting before starting finished flooring**

NOTE: The basis of Safety, Resource and Preferential logic requirements for all critical or near critical activities shall be documented in the Baseline Schedule Narrative or as requested by the OWNER.

- C. The basis of constraints and lags utilized in the PCS-BASELINE and subsequent UPDATES must be documented in an accompanying schedule narrative.

- D. The CONTRACTOR shall not utilize float suppression techniques or artificial restraints, constraints, lags or durations to lessen or control the amount of total or free float contained in the network.
- E. Float shall not be considered as time for the exclusive use of or benefit of either the OWNER or the CONTRACTOR. Float shall be considered as a resource available to both parties for the benefit of the project.
- F. Early Completion - An early completion schedule is one which anticipates completion of the work ahead of the corresponding Contract Time. Since Total Float is measured to the Contract Completion Date (CCD), and belongs to the Project, the CONTRACTOR shall not be entitled to any extension in Contract Time, or recovery for any delay incurred because of extensions in an early completion date, until all total float is used or consumed and performance or completion of the WORK extends beyond the corresponding Contract Time.
- G. Project Schedule Reports shall be submitted to the OWNER as follows:

Graphics - 11" x 17" (Tabloid)

1. Time Scaled Logic Diagram based on early dates, organized by OWNERWBS Codes with the longest (critical) path printed in red. (Attachment A.)
2. Bar chart, organized by CONTRACTOR-WBS, indicating early and late date bars with critical path printed in red.

Graphics – 8½" x 11" (A size)

3. Detailed Bar Chart, Grouped by CONTRACTOR-WBS
4. Estimated Cash Flow Histogram (if cost loaded) with planned value per period (bar) and cumulative to date (curve).

Tabular Reports – 8½" x 11" (A size)

5. Predecessor / Successor listing including relationship type and lag value, organized by Activity ID.
6. Tabular activity listing, sorted by Activity ID, with Early and Late Dates, Total and Free Float values.
7. Tabular activity listing, Grouped by Responsible party, sorted by Early Start, with Early Dates, Total and Free Float values.

8. Listing of all schedule constraints and open ends with explanation of each.

9. Identification of all lags contained in relationships and explanation of each.

10. Narrative report explaining the key "basis and assumptions" of the Project Control Schedule Baseline schedule.

11. Submittal / Procurement Status Report - A P3 Activity Matrix Report detailing for each submittal item, the Planned Dates for each step in the submittal/ procurement process.

12. Bid Item Listing.

H. Submittal

1. Six (6) sets of all graphics

2. Six (6) sets of all tabular reports

I. Acceptance

1. The OWNER may accept the PCS-Baseline submittal and subsequent updates as having been submitted in accordance with the Contract Specifications. The OWNER will review and make comments on the PCS. Meetings may be held between the OWNER and the CONTRACTOR, and all SUBCONTRACTORS and SUPPLIERS whom the CONTRACTOR may desire to invite or whom the OWNER may request be present.

2. The PCS submittal must meet in all respects the time and order of work requirements of the contract. The work shall be executed in the sequence indicated in the accepted baseline and subsequent accepted updates and revisions. If the CONTRACTOR changes the sequence of work, a baseline revision submittal will be required in accordance with Section 4.10.

3. Comments made by the OWNER on the PCS or any subsequent updates and revisions, will not relieve the CONTRACTOR from compliance with requirements of the Contract Documents.

4. If requested by the OWNER at any time during the project, the CONTRACTOR shall provide detailed, short term schedules for specific items of the work.

J. Baseline Schedule Revisions

1. No change shall be made to the accepted Project Control Schedule Baseline without the prior written authorization of the OWNER.
2. If the CONTRACTOR desires or the OWNER requests that the PCS Baseline be revised to reflect specific ISSUES of the current project plan, the CONTRACTOR shall prepare a detailed analysis of the time related impacts of the specific ISSUE, demonstrating how the CONTRACTOR proposes to incorporate the ISSUE into the PCS Baseline.
3. Each time impact analysis shall be submitted prior to approval of any change in the contract to facilitate the incorporation of the impact in the next schedule submittal by the CONTRACTOR.
4. Time extensions will be granted only to the extent that equitable time adjustments for the activity or activities affected exceed the remaining total float along the path of activities impacted by the ISSUE.
5. When an authorized revision is made to the PCS Baseline, the revised baseline shall be identified by a Revision Number, giving the revised Baseline a distinct identification separate from all previous or subsequent Baseline Revisions.

K. Schedule Updates

1. The CONTRACTOR shall submit the Project Control Schedule - Update to the OWNER each month, on a date assigned by the OWNER. The Update submittal shall include all information available up to the Data Date established by the OWNER.
2. The PCS-Update submittal shall be reviewed jointly (if necessary) with the OWNER for the purpose of verifying update information. The OWNER may request key SUBCONTRACTORS or SUPPLIERS to participate in the review with the CONTRACTOR. Information to verify includes but is not limited to:
 - a) Actual start / finish dates for activities started or finished in the current period.
 - b) Activity Percent Complete for activities that are currently in progress.
 - c) Remaining durations or expected finish dates for activities that are currently in progress.
 - d) Revised logic (as-built and projected) and changes in activity durations.
 - e) Impacts of Issues identified by the CONTRACTOR or OWNER.

f) Incorporation of OWNER approved time extensions.

3. The CONTRACTOR may not make changes to any actual events previously entered in prior updates without written concurrence by the OWNER.

4. PCS-Update submittals shall be prepared as follows:

Graphics - 11" x 17" (Tabloid size)

a) Time scaled Logic Diagram of early dates, organized by WBS Codes with the calculated critical path printed in red.

b) Bar chart, organized by WBS Codes, indicating early and late dates with critical path printed in red, with Target (Baseline) Bar.

Graphics - 8½" x 11" (A size)

c) Detailed Bar Chart , Grouped by OWNER-WBS, with Target (Baseline) Bar.

Tabular Reports - 8½" x 11" (A size)

d) Tabular activity listing, sorted by Activity ID, with Early and Late Dates, with Total and Free Float values.

e) Tabular activity listing, sorted by Early Start, with Current Early and Current Baseline dates and Variance between Current Early and Current Baseline Finish Dates.

f) Tabular activity listing, Grouped by Responsible party, sorted by Early Start, with Early Dates, Total and Free Float values.

g) Listing of any NEW or DELETED schedule constraints and open ends with explanation of each.

h) Identification of all NEW or DELETED lags contained in relationships and explanation of each.

i) Identification of all NEW or DELETED activities and an explanation of each.

j) Narrative report including description of problem areas, current and anticipated delaying factors, and their expected impact, and an explanation of current actions taken or proposed. In addition, alternative for possible schedule recovery to mitigate any potential delay and/or cost

increases should be included in the monthly narrative by the CONTRACTOR.

k) Submittal/Procurement Status Report.

l) Bid Item Listing Report.

m) If the CONTRACTOR fails to submit any of the PCS update submittal deliverables, the OWNER may withhold approval of progress payment estimates until such time as the CONTRACTOR submits the required update submittal.

PART 5 - PAYMENT FOR PROJECT CONTROL SCHEDULE

A. Project Control Schedule will be considered incidental to the cost of the overall project. There shall be no separate pay for the Project Schedule.

END OF SECTION

DRAFT

SECTION 01411 ENVIRONMENTAL PROTECTION

PART 1 – GENERAL

1.01 GENERAL REQUIREMENTS

The contractor shall perform the work minimizing environmental pollution and damage as the result of construction operations. Environmental pollution and damage is the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to humankind; or degrade the utility of the environment for aesthetic, cultural and/or historical purposes. The control of environmental pollution and damage requires consideration of land, water, and air, and includes management of visual aesthetics, noise, solid waste, as well as other pollutants. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of this contract.

A. SUBCONTRACTORS

The Contractor shall ensure compliance with this section by subcontractors.

B. PERMITS

The Contractor shall obtain all needed permits or licenses. The Owner will not obtain any permits for this project. The Environmental Protection Agency (EPA), through the national pollutant discharge elimination system (NPDES), requires general permits, a notice of intent, and a notice of discontinuation. The Contractor shall be responsible for implementing the terms and requirements of the appropriate permits as needed and for payment of all fees.

C. PRECONSTRUCTION SURVEY

Prior to starting any onsite construction activities, the Contractor and Owner shall make a joint condition survey, after which the Contractor shall prepare a brief report indicating on a layout plan the condition of trees, shrubs, and grassed areas immediately adjacent to work sites and adjacent to the assigned storage area and access routes as applicable. This report will be signed by both the owner and the Contractor upon mutual agreement as to its accuracy and completeness.

D. MEETINGS

The Contractor shall meet with representatives of the Owner to change the environmental protection plan as needed for compliance with the environmental pollution control program.

E. NOTIFICATION

The Owner will notify the Contractor in writing of any observed noncompliance with the previously mentioned Federal, State or local laws or regulations, permits, and other elements of the Contractor's environmental protection plan. The Contractor shall, after receipt of such notice, inform the Owner of proposed corrective action and take such action when approved. If the Contractor fails to comply promptly, the Owner may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or costs or damages allowed to the Contractor for any such suspensions.

F. PREVIOUSLY USED EQUIPMENT

The Contractor shall thoroughly clean all construction equipment previously used at other sites before it is brought into the work areas, ensuring that soil residuals are removed.

G. PAYMENT

No separate payment will be made for work covered under this section; all costs associated with this section shall be included in the contract unit and/or lump sum prices in the Bidding Schedule.

1.02 LAND RESOURCES

The Contractor shall confine all activities to areas defined by the drawings and specifications. Prior to the beginning of any construction, the Contractor shall identify the land resources to be preserved within the work area. Except in areas indicated on the drawings or specified to be cleared, the Contractor shall not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil, and land forms without permission. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such emergency use is permitted, the Contractor shall provide effective protection for land and vegetation resources at all times as defined in the following subparagraphs. Stone, earth or other material displaced into uncleared areas shall be removed.

A. WORK AREA LIMITS

Prior to any construction, the Contractor shall mark the areas that need not be disturbed under this contract. Isolated areas within the general work area which are to be saved and protected shall also be marked or fenced. Monuments and markers shall be protected before construction operations commence. Where construction operations are to be conducted during

darkness, the markers shall be visible. The Contractor's personnel shall be knowledgeable of the purpose for marking and/or protecting particular objects.

B. LANDSCAPE

Trees, shrubs, vines, grasses, land forms and other landscape features indicated and defined on the drawings to be preserved shall be clearly identified by marking, fencing, or wrapping with boards, or any other approved techniques. Fencing shall be erected at sufficient distance from a tree trunk (usually equal to the diameter of the tree crown) to prevent compaction of soil over the root spread.

C. UNPROTECTED ERODIBLE SOILS

Earthwork brought to final grade shall be finished as indicated. Side slopes and back slopes shall be protected as soon as practicable upon completion of rough grading. All earthwork shall be planned and conducted to minimize the duration of exposure of unprotected soils. Except in cases where the constructed feature obscures borrow areas, quarries, and waste material areas, these areas shall not initially be totally cleared. Clearing of such areas shall progress in reasonably sized increments as needed to use the developed areas as approved by the Owner.

D. DISTURBED AREAS

The Contractor shall effectively prevent erosion and control sedimentation through approved methods and Best Management Practices (BMP's) including, but not limited to, the following:

1. Retardation and control of runoff. Runoff from the construction site or from storms shall be controlled, retarded, and diverted to protected drainage courses by means of diversion ditches, benches, berms, and by any measures required by area wide plans under the Clean Water Act.
2. Erosion and sedimentation control devices. The Contractor shall construct or install temporary and permanent erosion and sedimentation control features as indicated on the drawings. Berms, dikes, drains, sedimentation basins, grassing, and mulching shall be maintained until permanent drainage and erosion control facilities are completed and operative.
3. Sediment basins. Sediment from construction areas maybe trapped in temporary or permanent sediment basins in accordance with the drawings. The basins shall accommodate the runoff of a local 5 year storm (6.1" in 24 hours). After each storm, the basins shall be pumped dry and accumulated sediment shall be removed to maintain basin effectiveness. Overflow shall be controlled by paved weirs or by vertical overflow pipes. The collected

topsoil sediment shall be reused for fill on the construction site, and/or stockpiled for use at another site. The Contractor shall institute effluent quality monitoring programs as requested by State and local environmental agencies.

4. De-watering of site and control of water quality. All water discharged from any excavation will be deposited at approved locations only. The Contractor will monitor water quality and not dispose of any material illegally. De-watering methods will be included in the Contractor's SWPPP.

E. CONTRACTOR FACILITIES AND WORK AREAS

The Contractor's field offices, staging areas, stockpile storage, and temporary buildings shall be placed in areas designated on the drawings or as directed by the Owner. Temporary movement or relocation of Contractor facilities shall be made only when approved. Borrow areas shall be managed to minimize erosion and to prevent sediment from entering nearby waters. Spoil areas shall be managed and controlled to limit spoil intrusion into areas designated on the drawings and to prevent erosion of soil or sediment from entering nearby waters. Spoil areas shall be developed in accordance with the grading plan indicated on the drawings. Temporary excavation and embankments for plan and/or work areas shall be controlled to protect adjacent areas from despoilment.

1.03 WATER RESOURCES

The Contractor shall keep construction activities under surveillance, management, and control to avoid pollution of surface and ground waters. Toxic or hazardous chemicals shall not be applied to soil or vegetation when such application may cause contamination of the fresh water reserve. Monitoring of water areas affected by construction shall be the Contractor's responsibility. All water areas affected by construction activities shall be monitored by the Contractor.

A. WASHING AND CURING WATER

Waste waters directly derived from construction activities shall not be allowed to enter stormwater or wastewater facilities.

B. FISH AND WILDLIFE

The Contractor shall minimize interference with, disturbance to, and damage of fish and wildlife.

1.04 AIR RESOURCES

Equipment operation and activities or processes performed by the Contractor in accomplishing the specified construction shall be in accordance with the State of Texas rules and all Federal emission and performance laws and standards. Ambient Air Quality Standards set by the Environmental Protection Agency shall be maintained. Monitoring of air quality, if required, shall be the Contractor's responsibility. All air areas affected by the construction activities shall be monitored by the Contractor. Monitoring results will be periodically reviewed by the Owner to ensure compliance.

A. PARTICULATES

Dust particles, aerosols and gaseous by-products from construction activities; and processing and preparation of materials, such as from asphaltic batch plants; shall be controlled at all times, including weekends, holidays and hours when work is not in progress. The Contractor shall maintain excavations, stockpiles, haul roads, permanent and temporary access roads, plant sites, spoil areas, borrow areas, and other work areas within or outside the project boundaries free from particulates which would cause the air pollution standards to be exceeded or which would cause a hazard or a nuisance. Sprinkling, chemical treatment of an approved type, light bituminous treatment baghouse, scrubbers, electrostatic precipitators or other methods will be permitted to control particulates in the work area. Sprinkling, to be efficient, must be repeated to keep the disturbed area damp at all times. The Contractor must have sufficient, competent equipment available to accomplish these tasks. Particulate control shall be performed as the work proceeds and whenever a particulate nuisance or hazard occurs.

B. HYDROCARBONS AND CARBON MONOXIDE

Hydrocarbons and carbon monoxide emissions from equipment shall be controlled to Federal and State allowable limits at all times.

C. ODORS

Odors shall be controlled at all times for all construction activities, processing and preparation of materials.

D. SOUND INTRUSIONS

The Contractor shall keep construction activities under surveillance and control to minimize environment damage by noise. The Contractor shall comply with the provisions of the City ordinances.

1.05 WASTE DISPOSAL

Disposal of wastes shall comply with all applicable City requirements and as specified below.

A. SOLID WASTES

Solid wastes (excluding clearing debris) shall be placed in containers and emptied on a regular schedule. Handling and disposal shall be conducted to prevent contamination. Segregation measures shall be employed so that no hazardous or toxic waste will become co-mingled with solid waste. The Contractor shall transport solid waste and dispose of it in compliance with Federal, State, and local requirements for solid waste disposal. Contractor shall dispose of classified non-hazardous solid waste at disposal area. The Contractor shall comply with Federal, State, and local laws and regulations pertaining to the use of landfill areas.

B. HAZARDOUS WASTES

The Contractor shall take sufficient measures to prevent spillage of hazardous materials during dispensing and collect waste in suitable containers observing compatibility. Toxic materials shall not be used within the construction site. The Contractor shall immediately transport hazardous waste and dispose of it in compliance with Federal and local laws and regulations. Storage of hazardous waste on the construction site is prohibited. Spills of hazardous materials shall be immediately reported to the Owner. Cleanup and cleanup costs due to spills shall be the Contractor's responsibility.

C. BURNING

Burning will not be allowed.

1.06 HISTORICAL, ARCHAEOLOGICAL, AND CULTURAL RESOURCES

Existing historical, archaeological, and cultural resources within the Contractor's work area will be so designated by the Owner, if any has been identified. The Contractor shall take precautions to preserve all such resources as they existed at the time they were first pointed out. The Contractor shall provide and install protection for these resources and be responsible for their preservation during the life of the contract. If during excavation or other construction activities any previously unidentified or unanticipated resources are discovered or found, all activities that may damage or alter such resources shall be temporarily suspended. Resources covered by this paragraph include but are not limited to: any human skeletal remains or burials; artifacts; shell, midden, bone charcoal, or other deposits; rocks or coral alignments, pavings, wall, or other constructed features; and any indication of agricultural or other human activities. Upon such discovery or find, the Contractor shall immediately notify the Owner. While waiting for instructions the Contractor shall record, report, and preserve the finds

in accordance with the requirements of the Texas State Historical Preservation Office.

1.07 POST CONSTRUCTION CLEANUP

The Contractor shall clean up all areas used for construction.

1.08 RESTORATION OF LANDSCAPE DAMAGE

The Contractor shall restore landscape features damaged or destroyed during construction operations outside the limits of the approved work areas at no costs to the OWNER.

1.09 MAINTENANCE OF ANTI-POLLUTION FACILITIES

The Contractor shall maintain permanent and temporary pollution control facilities and devices for the duration of the contract or for that length of time construction activities create the particular pollutant.

1.10 TRAINING OF CONTRACTOR PERSONNEL

The Contractor's personnel shall be trained in all phases of environmental protection. The training shall include methods of detecting and avoiding pollution, familiarization with pollution standards, both statutory and contractual, and installation and care of devices, vegetative covers, and instruments required for monitoring purposes to ensure adequate and continuous environmental pollution control.

PART 2 – PRODUCTS

Not used.

PART 3 – EXECUTION

Not used.

END OF SECTION

SECTION 01568 EROSION AND SEDIMENT CONTROL DURING CONSTRUCTION

PART 1 - GENERAL

1.01 WORK INCLUDED

Furnish labor, materials, equipment and incidentals necessary to provide erosion and sediment control for the duration of the construction period including furnishing, installing and maintaining erosion and sediment control structures and procedures and the proper removal when no longer required.

The intent of this specification is to provide guidelines for the Contractor to adhere to all State, Federal, and Local environmental regulations. It is also the intent to provide preventive measures to keep sediment from entering any storm water system, including open channels. It is the Contractor's responsibility to adhere to all State, Federal and Local requirements. While the Owner may require the Contractor to install erosion control devices during construction, this will in no way relieve the Contractor of his responsibility.

1.02 QUALITY ASSURANCE

- A. Comply with applicable requirements of all governing authorities having jurisdiction. The Specifications and the Plans are not represented as being comprehensive, but rather to convey the intent to provide complete slope protection and erosion control for both the Owner's and adjacent property.
- B. Erosion control measures shall be established at the beginning of construction and maintained during the entire length of construction. On-site areas which are subject to severe erosion and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive additional erosion control measures as directed by the Owner or the Engineer.
- C. All land-disturbing activities shall be planned and conducted to minimize the size of the area to be exposed at any one time and to minimize the time of exposure.
- D. Surface water runoff originating upgrade of exposed area shall be controlled to reduce erosion and sediment loss during the period of exposure.
- E. When the increase in the peak rates and velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving ditch or stream, the Contractor shall install measures to control both the velocity and rate of release so as to minimize accelerated erosion and increased sedimentation of the stream as directed by the Owner or the Engineer.

- F. All land-disturbing activities shall be planned and conducted so as to minimize off-site sedimentation damage.
- C. The Contractor shall be responsible for periodically cleaning out and disposing of all sediment once the storage capacity of the drainage feature or structure receiving the sediment is reduced by one-half. The Contractor shall also be responsible for cleaning out and disposing of all sediment at the time of completion of the Work.

1.03 SUBMITTALS

Submittals shall be in accordance with Section 01300, SUBMITTALS, and shall include:

- A. Manufacturer’s Literature: Descriptive data of installation methods and procedures.
- B. Certificates: Manufacturer’s certification that materials meet specification requirements.

1.04 JOB CONDITIONS AND ORDINANCES

Comply with the local ordinances. If local ordinances require *more* stringent or additional erosion and sediment control measures during construction, Contractor shall provide such measures.

PART 2 - PRODUCTS

2.01 MATERIALS

- A. STRAW BALES: Straw bales shall weigh a minimum of fifty (50) pounds and shall be at least 30” in length. Bales shall be composed entirely of vegetable matter and be free of seeds. Binding shall be either wire or nylon string. Jute or cotton binding is unacceptable. Bales shall be used for not more than three months before being replaced. However, if weather conditions cause biological degradation of the straw bales, they shall be replaced sooner than the three month time period to prevent a loss of structural integrity of the dike.
- B. SILT FENCE: Silt fence fabric shall be a nylon reinforced polypropylene fabric which has a built-in cord running the entire length of the top edge of the fabric. The fabric must meet the following minimum criteria:

Tensile Strength, ASTM D4632	90 lbs.
Puncture Rating, ASTM D4833	60 lbs.
Mullen Burst Rating, ASTM D3786	200 psi.
Apparent Opening Size, U.S. Sieve No.	40

Silt fence shall be “Enviro Fence” preassembled silt fence, AMXCO Silt Stop prefabricated silt fence, AMOCO Style 2155 preassembled silt fence or approved equal.

- C. SILT FENCE POSTS: A minimum 2” x 2” (nominal) x 54” pressure treated wood posts of Number 2 Grade southern yellow pine or approved equal.
- D. SAND BAG: Sand bag material shall be polypropylene, polyethylene, polyamide or cotton burlap woven fabric, minimum unit weight four (4) ounces per square yard, mullen burst strength exceeding 300 psi and ultraviolet stability exceeding 70%. Length shall be 24 to 30 inches, width shall be 16 to 18 inches and thickness shall be six (6) to eight (8) inches and having an approximate weight of 40 pounds. Sand bags shall be filled with coarse grade sand, free from deleterious material. All sand shall pass through a No. 10 sieve.
- E. P.V.C. PIPE: Pipe shall be SDR-35 polyvinyl chloride having a minimum nominal internal diameter of 4”. Pipes shall be sized for anticipated flows.
- F. SOIL RETENTION BLANKET: Soil retention blankets shall consist of a geocomposite of excelsior or fiber blanket with an extruded plastic net attached to the top side. The plastic net shall be photodegradable and the excelsior or fiber blanket shall be made smolder resistant without the use of chemicals. Soil retention blankets shall be high velocity type to resist severe runoff. The soil retention blanket shall be one (1) of the following classes and types:
 - 1. Class 1. “Slope Protection”
 - (a) Type A. Slopes of 3:1 or flatter-Clay soils
 - (b) Type B. Slopes of 3:1 or flatter - Sandy soils
 - (c) Type C. Slopes steeper than 3:1 - Clay soils
 - (d) Type D. Slopes steeper than 3:1 - Sandy soils
 - 2. Class 2. “Flexible Channel Liner”
 - (a) Type E. Short-term duration (Up to 2 Years)
Shear Stress (t_d) <1.0 lb./sq. ft.
 - (b) Type F. Short-term duration (Up to 2 Years)
Shear Stress (t_d) 1.0 to 2.0 lb./sq. ft.
 - (c) Type C. Long-term duration (Longer than 2 Years)

Shear Stress (t_d) > 2.0 to < 5.0 lb./sq. ft.

- (d) Type H. Long-term duration (Longer than 2 Years)
Shear Stress (t_d) greater than 0 Equal to 5.0 lb/sq. ft.

The Contractor has the option of selecting an approved soil retention blanket provided that selection conforms to the following list of approved soil retention blankets for slope protection applications:

CLASS I. SLOPE PROTECTION

TYPE A: Slopes of 3: 1 or Flatter- Clay Soils

Airtrol® ANTI-WASH®/GEOJUTE® (Regular)
Contech Standards®
Contech Standards Plus®
Green Triangle Regular®
Green Triangle Superior®
GREENSTREAK® PEC MAT
Curlex®
North American Green® S150
North American Green® S75
North American Green® SC 150
POLYJUTE® 407/GT
SOIL SAVER®
TerraJute®
Verdyol® ERO-MAT®
Xcel Regular®
Xcel Superior®

TYPE B: Slopes of 3:1 or Flatter-Sandy Soils

Contech Standards®
Contech Standards Plus®
GEOCOIR®/DEKOWE® 700
Green Triangle Superior®
Green Triangle Regular®
North American Green® 575
North American Green® SC 150
North American Green® S150
POLYJUTE® 407/CT
TerraJute®
Verdyol® ERO-MAT®
Xcel Superior®
Xcel Regular®

TYPE C: Slopes Steeper than 3:1-Clay Soils

Airtrol®
ANTI-WASH®/GEOJUTE® (Regular)
Contech Standards Plus®
Curlex®
Green Triangle Superior®
GREENSTREAK® PEC-MAT
North American Green® SC 150
North American Green® S150
POLYJUTE® 407/CT
SOIL SAVER®
TerraJute®
Xcel Superior®

TYPE D: Slopes Steeper than 3:1-Sandy Soils

Contech Standards Plus®
GEOCOIR®/DEKOWE®700
Green Triangle Superior®
North American Green®S150
North American Green®SC150
POLYJUTE® 407GT
TerraJute®
Xcel Superior®

CLASS II: FLEXIBLE CHANNEL LINER PROTECTION

PART 3 - EXECUTION

3.01 PREPARATION

- A. Contractor shall prepare the site for installation of the erosion and sediment control devices in accordance with the manufacturer's recommendations when applicable. At all times, CONTRACTOR, shall take extreme care during the installation of the applicable devices to minimize disturbance of the project site.

3.02 INSTALLATION

A. TEMPORARY STRAW BALE DIKE

1. Straw bales shall be embedded a minimum of 4" and securely anchored using 2" x 2" wood stakes driven through the bales into the ground a minimum of 6" Straw bales are to be placed directly adjacent to one another leaving no gap between them.

2. Bales shall be placed in a single row, lengthwise on proposed line, with ends of adjacent bales tightly abutting one another. In swales and ditches, the barrier shall extend to such a length that the bottoms of the end bales are higher in elevation than the top of the lowest middle bale. Additional bales shall be placed behind the first row where the bales abut each other. The additional bale is used to prevent unfiltered runoff from escaping between the bales.
3. The-excavated soil shall be backfilled against the barrier. Backfill shall conform to ground level on the downhill side and shall be built up to 4" above ground level on the uphill side. Loose straw shall be scattered over the area immediately uphill from a straw barrier.

B. SILT FENCE

The purpose of a silt fence is to intercept and detain water-borne sediment from unprotected areas to a limited extent. The Contractor shall excavate a 6 inch wide by 6 inch deep trench for site fence bedding along the lower perimeters of the site where necessary to prevent sediment from entering any drainage system. The Contractor shall install the silt fence in accordance with the manufacturer's recommendations and instructions. Silt fence is used during the period of construction near the perimeter of a disturbed area to intercept sediment while allowing water to percolate through. This fence shall remain in place until the disturbed area is permanently stabilized. Silt fence should not be used where there is a concentration of water in a channel or drainage way or where soil conditions prevent a minimum toe-in depth of 6" or installation of support post to depth of 12". Fabric shall overlap at abutting ends a minimum of 3' and shall be jointed such that no leakage or bypass occurs. If concentrated flow occurs after installation, corrective action must be taken such as placing rock berm in the areas of concentrated flow.

C. SAND BAG BERM

1. The purpose of a sandbag berm is to intercept sediment-laden water from disturbed areas such as construction in steam beds, create a retention pond, detain sediment and release water in sheet flow.
2. A temporary sand bag berm shall be installed across a channel or right of way in a developing or disturbed area and should be used when the contributing drainage area is greater than 5 acres. The berm shall be a minimum height of 18", measured from the top of the existing ground at the upslope toe to the top of the berm. The berm shall be sized to have a minimum width of 48" measured at the bottom of the berm and 18" measured at the top of the berm.

3. The sand bag berm shall be inspected after each rain. The sand bags shall be reshaped or replaced as needed during inspection. Additional inspections shall be made daily by the responsible party and when the silt reaches 6", the accumulated silt shall be removed and disposed of at an approved site in a manner that will not contribute to additional siltation. The sand bag berm shall be left in place until all upstream areas are stabilized and accumulated silt removed; removal must be done by hand.

D. SOIL RETENTION BLANKETS

1. A soil retention blanket (SRB) is a geotextile or biodegradable fabric placed over disturbed areas to limit the effects of erosion due to rainfall impact and runoff across barren soil. Soil retention blankets are manufactured by a wide variety of vendors addressing a wide variety of conditions such as vegetation establishment and high velocity flow. Blankets are used in areas which are difficult to stabilize such as steep slopes, drainage swales or high pedestrian traffic areas.
2. The soil retention blanket, whether installed as slope protection or as flexible channel liner, shall be placed within 24 hours after seeding or sodding operations have been completed, or as approved by the Engineer. Prior to placing the blanket, the area to be covered shall be relatively free of all rocks or clods over 1-1/2" in maximum dimension and all sticks or other foreign material which will prevent the close contact of the blanket with the soil. The area shall be smooth and free of ruts and other depressions. If as a result of rain, the prepared bed becomes crusted or eroded or if any eroded places, ruts or depressions exist for any reason, the Contractor shall be required to rework the soil until it is smooth and to reseed or resod the area at the Contractor's expense.
3. Installation and anchorage of the soil retention blanket shall be in accordance with the manufacturer's recommendations.

E. PROTECTION OF BARE AREAS

1. Apply seeding and soil retention blanket to bare areas including new embankment areas, fills, stripped areas, graded areas or otherwise disturbed areas, which have a grade greater than 5% or which will be exposed for more than 30 days.
2. Bare working areas on which it is not practical or desirable to install seeding and soil retention blankets, as determined by the Engineer, such as areas under proposed building slabs, shall be temporarily sloped to drain at a minimum of 0.2% and a maximum of 5% grade. These areas shall then be "track walked" with a crawler dozer traveling up and down the slope to form the effect of small "terraces" with the tracks of the dozer.

Apply a minimum of three (3) coverages to each area with the dozer tracks,

3. Route runoff from the areas through the appropriate silt fence system.
4. Protect earth spoil areas by “trackwalking” and silt fences.

F. INTERCEPTOR SWALE

1. Interceptor swales may have a v-shape or be trapezoidal with a flat bottom and side slopes of 3:1 or flatter. These are used to shorten the length of exposed slope by intercepting runoff and can also serve as perimeter swales preventing off-site runoff from entering the disturbed area or prevent sediment-laden runoff from leaving the construction site or disturbed area. The outflow from a swale must be directed to a stabilized outlet or sediment trapping device. The swales should remain in place until the disturbed area is permanently stabilized.
2. Stone Stabilization shall be used when grades exceed 2% or velocities exceed 6 feet per second and shall consist of a layer of crushed stone 3” thick, or flexible channel liner soil retention blankets. Stabilization shall extend across the bottom of the swale and up both sides of the channel to minimum height of 6 inches above the design water surface elevation based on a two year storm.
3. An interceptor swale shall be installed across exposed slopes during construction and should intercept no more than five (5) acres of runoff. Swales shall have a minimum bottom width of 2'-0” and a maximum depth of 1'-6” with side slopes of 3 :1 or flatter. Swale must have positive drainage for its entire length to an outlet. When the slope exceeds 3%, or velocities exceed 4 feet per second (regardless of slope), stone stabilization is required. Check dams are also recommended to reduce velocities in the swales possibly reducing the amount of stabilization necessary. Swales should be inspected on a weekly basis during wet weather and repairs should be made promptly to maintain a consistent cross section.
4. All trees, brush, stumps, obstructions and other material shall be removed and disposed of so as not to interfere with the proper functioning of the swale.
5. The swale shall be excavated or shaped to line, grade, and cross-section as required to meet criteria specified herein and be free of bank projections or other irregularities which will impede normal flow.
6. All earth removed and not needed in construction shall be disposed of in

an approved spoils site so that it will be conveyed to a sediment trapping device.

7. Diverted runoff from a disturbed or exposed upland area shall be conveyed to a sediment trapping device.
8. The on-site location may need to be adjusted to meet field conditions in order to utilize the most suitable outlet.
9. Minimum compaction for the swale shall be 90% standard proctor.

G. LOCATION OF EROSION AND SEDIMENT CONTROL STRUCTURES

1. Locate erosion and sediment control structures as required to prevent erosion and removal of sediment from the project site. Silt fences shall be required for disturbed areas and soil stockpiles/spoil areas. Each silt fence installation shall have a minimum net length (exclusive of embedments into diversion dikes or other ineffective areas) of 25 feet. The runoff from a maximum of one (1) acre of disturbed area or soil stockpile/ spoil area shall be routed through any individual silt fence installation.
2. Install diversion dikes to divert runoff to the silt fence installation.
3. Install silt traps at the inlet (upstream) end of the drainage structures, including open channels, through which runoff from disturbed areas or soil stockpiles/spoil areas may drain.
4. Provide an overall erosion and sediment control system which protects disturbed areas and soil stockpiles/spoil areas. The system shall be modified by the Contractor from time to time to effectively control erosion and sediment during construction.

3.03 MAINTENANCE

- A. Maintain erosion and sediment control structures and procedures in full working order at all times during construction. This shall include any necessary repair or replacement of items which have become damaged or ineffective. Remove sediment on a regular basis which accumulates in sediment control devices and place the material in approved earth spoil areas or return the material to the area from which it eroded.
- B. Upon completion of construction, properly remove the temporary erosion and sediment control structures and complete the area as indicated.
- C. Soil retention blankets will not require removal if installed on a finished graded area specified to receive seeding.

3.04 FIELD QUALITY CONTROL

In the event of conflict between the requirements and storm water pollution control laws, rules or regulations or other Federal, State or Local agencies, the more restrictive laws, rules or regulations shall apply.

PART 4 - MEASUREMENT AND PAYMENT

4.01 MEASUREMENT

The work as provided for by this specification shall be measured as lump sum or as noted on the bid request. When not line item is included in the Bid Proposal, this work shall be considered incidental to the completion of the project and no additional compensation shall be paid for this work.

4.02 PAYMENT

When shown in the proposal, the work as prescribed for in this specification shall be paid for labor, tools, equipment, excavation, backfilling, materials, and incidentals necessary to complete the work.

END OF SECTION

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SECTION 01700 – PROJECT CLOSEOUT PROCEDURES

PART 1 – GENERAL

1.1 DESCRIPTION OF WORK AND RELATED DOCUMENTS

- A. Furnish all work and materials, appliances, tools, equipment, facilities, transportation and services required and incidental thereto, as shown on drawings and/or specified herein including but not limited to; the submittal of closeout documents, final cleaning of materials and equipment and furnishing permit clearances, guarantees and warranties.
- B. Related Work Specified Elsewhere:
 - 1. Submittal Requirements: Section 01300
- C. The completion of the closeout procedures indicated in these specifications will be a condition for releasing final payment.

1.2 PROJECT CLEAN-UP

- A. Provide all required personnel, equipment and materials needed to maintain the specified standard of cleanliness. Use only materials and equipment which are compatible with the surface being cleaned, as recommended by the manufacturer of the material, or as approved by the Engineer/Architect.
- B. Final cleaning shall mean a level of cleanliness generally provided by skilled cleaners using commercial quality, site maintenance equipment and materials.
- C. The Contractor shall schedule a final cleaning as approved by the Engineer/Architect.
- D. The contractor shall restore any disturbed areas or structures to pre-construction conditions or improved conditions.

1.3 ONSITE TRAINING

- A. The Contractor shall provide a demonstration of the operation techniques and methods of the mechanical, electrical and plumbing systems. This demonstration must be coordinated with the Engineer/Architect. The operation and maintenance manuals must be available for use during this training period.
- B. The Contractor shall propose a time in writing to the Engineer/Architect allowing at least seventy-two (72) hours notice.

1.4 AS BUILT DRAWINGS

- A. Final "As-Built" drawings shall be prepared by the Contractor in an Auto CAD 2005, Microstation or better format. These drawings shall indicate all changes or deviations from the construction documents. These drawings shall be submitted to the Engineer/Architect on a CD. The drawings must clearly state AS BUILT and be neatly organized.

1.5 GUARANTEES AND WARRANTIES

- A. The Contractor shall provide a construction warranty letter.
- B. The Contractor shall provide final clearances from all permitting agencies.

1.6 FINAL COMPLETION

- A. The Contractor shall supply a written request for a Final Completion inspection. This request shall include the following:
 - 1. Certification that the work and actions specified in the Contract Documents has been completed and that the Owner has full use of the site.
 - 2. All equipment has been tested and balanced and is fully functional.
 - 3. The Onsite Training Program has been completed and there are no outstanding issues resulting from said program.
 - 4. A copy of the list of deficiencies generated by the Substantial Completion Inspection, with each item initialed and showing date completed.
 - 5. A list of all Subcontractors and material suppliers with name, address and phone number. Include source for parts replacement and local representative if different.
 - 6. Submit all test/adjust/balance records and start-up performance reports.
 - 7. Submit all tools, keys and any special devices to assure complete operation by the Owner.
 - 8. Final application for payment.
 - 9. Waivers, Sworn Statements and Affidavits of Payments to Subcontractors and Suppliers.

END OF SECTION

SECTION 02000 ATHLETIC SURFACE COATING SYSTEM FOR HOT MIX ASPHALT TENNIS COURTS

1.0. SCOPE

This specifications pertains to World Class Athletic surfaces Coating System for an asphalt tennis court.

2.0 WORLD CLASS COLOR COATING SYSTEM

2.1 Materials

- 2.1a World Class-Acrylic Resurfaces
- 2.1b World Class-Color Concentrate
- 2.1c World Class-Line Paint —Acrylic Marking Paint
- 2.1d Water-Clean and Fresh
- 2.1e Sand-50-70 Mesh (Silica Sand)

3.0 CONSTRUCTION

3.1 Surface Preparation - The surface to be coated must be sound, free from dirt, Dust, and other foreign matter. Prior to the application of the athletic surface depressions greater than 1/8" deep must be patched and leveled into tolerance. All cracks must be filled and leveled.

3.2 Leveling Course - In order to provide a tight, blemish free surface for the World Class Color Coating System, one .or two applications of Acrylic Resurfacer shall be applied to the entire surface at a rate of .06 undiluted gallons per square yard per coat.

World Class Acrylic Resurfacer is to be mixed as follows:

World Class Acrylic Resurfacer	20 gallons
Silica Sand (50-70 mesh)	150 lbs.,-200 lbs..
Water	12 gallons

3.3 Filler Coats - World Class Color Concentrate shall be applied to the properly prepared surface in two (2) applications at a rate of .06 undiluted gallons per square yard per coat. The second application shall not proceed until the first coat is thoroughly dry. World Class Concentrate shall be mixed with sand and water as follows:

World Class Color Concentrate	27 gallons
Water	15 gallons
Sand (50-70 mesh)	200 lbs.

The filler coat shall be free of ridges and squeegee marks.

3.4 Playing Lines - World Class Textured Line Paint shall be applied as per United States Tennis Association regulations for both singles and doubles play when the final coat is thoroughly dry. Apply two coats.

4.0 LIMITATIONS

Application temperature shall be minimum of 50⁰ F, and surface temperature not above 130⁰ F. Do not apply when surface is wet or if rain is imminent or forecast. Keep from freezing. Do not store in direct sunlight.

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GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING CONSTRUCTION

SEC. 1 – Definitions

(a) The Contract Documents shall consist of the Advertisement for Bids, Instructions to Bidders, The Proposal, The Contract Agreement, Performance Bond, Payment Bond, General Conditions of the Contract, Special Conditions of the Contract, Construction Specifications, Construction Drawings, Addendas, Change Orders and the Construction Plans including all modifications thereof incorporated in any of the documents before the execution of the Agreement.

(b) The Owner, the Contractor and the Engineer are those named as such in the Agreement. They are treated throughout the contract Documents as if each were of singular number and masculine gender.

(c) Wherever in this contract the word “Engineer” is used it shall be understood as referring to the Engineer of the Owner, acting personally or through assistant duly authorized in writing by the Engineer.

(d) Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or to an authorized representative of such individual, firm, or corporation, or if delivered at or sent by registered mail to the last business address known to him who gives the notice, with a copy sent to the central office of the Contractor.

(e) The term “Subcontractor” shall mean anyone (other than the contractor) who furnished at the site, under and Agreement with the contractor, labor, or labor and materials, or labor and equipment, but shall not include any person who furnished services of a personal nature.

(f) Work shall mean the furnishing of all labor, materials, equipment, and other incidentals as are required to complete the Contract for the purpose for which it was intended but was not shown on the Drawing or called for in the Specifications, or is desired by the Owner in addition to that work called for in the Drawings and Specifications.

(g) Dispute shall mean lack of agreement between any parties that have any obligations, duties, or responsibilities under the terms of the contract, Drawings, or Specifications.

SEC. 2 – Execution and Correlation of Documents

The contract Documents shall be signed in duplicate by the Owner and the Contractor.

The contract Documents are complementary and what is called for by any one shall be as binding as if called for by all. In case of conflict between Drawings, and Specifications, the Specifications shall govern. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

SEC. 3 – Design, Drawings and Instructions

It is agreed that the Owner will be responsible for the adequacy of design and sufficiency of the Drawings and Specifications. The Owner, through the Engineer, or the Engineer as the Owner's representative, shall furnish Drawings and Specifications which adequately represent the requirements of the work to be performed under the contract. All such Drawings and instructions shall be consistent with the Contract Documents and shall be true developments thereof. In the case of lump-sum Contracts, Drawings and Specifications which adequately represent the work to be done shall be furnished prior to the time of entering into the Contract. The Engineer may, during the life of the Contract, and in accordance with Section 18, issue additional instructions by means of Drawings or other media necessary to illustrate changes in the work.

SEC. 4 – Copies of Drawings Furnished

Unless otherwise provided in the Contract Documents, the Engineer will furnish the Contractor, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the work.

SEC. 5 – Order of Completion

The contractor shall submit, at such times as may be reasonably requested by the Engineer, schedules which shall show the order in which the Contractor proposed to carry on the work, with dates at which the Contractor will start the several part of the work, and estimated dates of completion of the several parts.

SEC. 6 – Ownership of Drawings

All drawings, Specifications and copies thereof furnished by the Engineer shall not be reused on other work and, with the exception of the signed Contract, sets are to be returned to him on request, at the completion of the work. Owner may keep one set of Drawings for future use on the Project, including for maintenance of the Project.

SEC. 7 – Familiarity with Work

The Owner shall make known to all prospective bidders, prior to the receipt of bids, all information that he may have as to subsurface conditions in the vicinity of the work, topographical maps, or other information that might assist the bidder in properly evaluation the amount and character of the work that might be required. Such information is given, however, as being the best factual information available to the Owner. The Contractor, by careful examination, shall satisfy himself as to the nature and location of the work, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contact.

SEC. 8 – Change Conditions

The Contractor shall promptly, and before such conditions are disturbed, notify the Owner in writing of: (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or (2) previously unknown physical or other conditions at the site, or an unusual nature, differing materially from those ordinarily encountered and generally recognized as ingrent in work of the character provided for in this Contract. The Engineer shall promptly investigate the conditions, and if he finds that such conditions, do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required; provided that the Engineer may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final settlement of the Contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Section 39 hereof.

SEC. 9 – Materials and Appliances

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power transportation and other facilities necessary for the execution and completion of the work. Unless otherwise specified, all materials incorporated in the permanent work shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

SEC. 10 – Employees

The Contractor shall at all times enforce strict discipline and good order among his employees, and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned to him.

SEC. 11 – Royalties and Patents

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof except that the Owner shall be responsible for all such loss when a particular process or the project of a particular manufacturer or manufactures is specified, unless the Owner has notified the Contractor prior to the signing of the contract that the particular process or product is patented or is believed to be patented.

SEC. 12 – Surveys

Unless otherwise specified, the Owner shall furnish all land surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of bench marks adjacent to the work. From the information provided by the Owner, the Contractor shall develop and make all detail surveys needed for construction such as slopes stakes, batter boards, stakes for pile locations and other working points, lines and elevations.

The contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

SEC. 13 – Permits, Licenses and Regulations

Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the contractor observes that the Drawings and Specifications are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work.

SEC. 14 – Protection of the Public and of Work and Property

The Contractor shall provide and maintain all necessary watchmen, barricades, warning lights and signs and take all necessary precautions for the protection, and safety of the public. He shall take all reasonable precautions to protect the Owner's property from injury or loss arising in connection with this contract. He shall make good any damage, injury or loss to his work and to the property of the Owner resulting from lack of reasonable protective precautions, except such as may be due to errors in the Contract Documents, or caused by agents or employees of the Owner. He shall adequately protect adjacent private and public property, as provided by law and the Contract Documents.

In an emergency affecting the safety of life, of the work, or of adjoining property, the Contractor is, without special instructions or authorization from the Engineer, hereby permitted to act at his discretion to prevent such threatened loss or injury. He shall also act, without appeal, if so authorized or instructed by the Engineer.

Any compensation claimed by the Contractor on account of emergency work, shall be determined by agreement.

SEC. 15 – Inspection of Work

The Owner shall provide sufficient competent personnel, working under the supervision of a qualified engineer, for the inspection of the work while such work is in progress to ascertain that the completed work will comply in all respects with the standards and requirements set forth in the Specifications. Notwithstanding such inspection, the contractor will be held responsible for the acceptability of the finished work.

The Engineer and his representatives shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access, and for inspection.

If the Specifications, the Engineer's Instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspected is by an authority other than the Engineer of the date fixed for such inspection. Inspections by the Engineer shall be made promptly, and where practicable at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer be uncovered for examination and properly restored at the Contractor's expense, unless the Engineer has unreasonably delayed inspection.

Re-examination of the work may be ordered by the Engineer, and, if so ordered, the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the Owner shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, the Contractor shall pay such cost.

SEC. 16 – Superintendence

The Contractor shall keep on his work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the Contractor, and all direction give to him shall be binding as if given to the Contractor. Important directions shall be so confirmed on written request in each case. The Contractor shall give efficient superintendence to the work, using his best skill and attention.

SEC. 17 – Discrepancies

If the Contractor, in the course of the work, finds any discrepancy between the Drawings and the physical conditions of the locality, or any errors or omissions in Drawings or in the layout as given by survey point and instruction, he shall immediately inform the Engineer, in writing, and the Engineer shall promptly verify the same. Any work done after such discovery, until authorized will be done at the Contractor's risk.

SEC. 18 – Changes in the Work

The Owner may make changes in the Drawings and Specifications of scheduling of the Contract within the general scope at any time by a written order. If such changes add to or deduct from the contractor's cost of the work, the contract shall be adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

In giving instructions, the Engineer shall have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purpose of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Engineer, and no claim for an addition to the Contract Sum shall be valid unless the additional work was so ordered.

The Contractor shall proceed with the work as changed and the value of any such extra work or change shall be determined as provided in the Agreement.

SEC. 19 – Extension of Time

Extension of time stipulated in the Contract for completion of the Work will be made when changes in the work occur, as provided in Section 18; when the work is suspended as provided in Section 23; and when the work of the Contractor is delayed on account of conditions which could not have been foreseen, or which were beyond the control of the Contractor, his subcontractor or suppliers, and which were not the result of their fault or negligence. Extension of time for completion shall also be allowed for any delays in the progress of the work caused by any act (except as provided elsewhere in these General Conditions) or neglect of the Owner or of his employees or by other contractors employed by the Owner, or by any delay in the furnishing of Drawings and necessary information by the Engineer, or by any other case which in the opinion of the Engineer entitled the Contractor to an extension of time, including but not restricted to, acts of the public enemy, acts of any government in either its sovereign or any applicable contractual capacity, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restriction, freight embargoes, unusually severe weather, or labor disputes.

The Contractor shall notify the Engineer promptly of any occurrence or conditions which in the Contractor's opinion entitle him to an extension of time. Such notice shall be in writing and shall be submitted in ample time to permit full investigation and evaluation of the Contractor's claim. The Engineer shall acknowledge receipt of the Contractor's notice within 5 days of its receipt. Failure to provide such notice shall constitute a waiver by the Contractor of any claim.

SEC. 20 – Claims

If the Contractor claims that any instructions by Drawings or other media issued after the date of the Contract involve extra cost under this Contract, he shall give the Engineer written notice thereof within 7 days after the receipt of such instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for changes in the work. No such claim shall be valid unless so made.

SEC. 21 – Deductions for Uncorrected Work

If the Engineer deems it inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made therefore, unless the Contractor elects to correct the work.

SEC. 22 – Correction of Work Before Final Payment

The contractor shall promptly remove from the premises all materials and work condemned by the Engineer as failing to meet contract requirements, whether incorporated in the work or not. The contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not take action to remove such condemned material and work within 10 days after written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten days time thereafter, the Owner may, upon ten days' written notice, sell such materials at auction or at private sale and shall pay to the Contractor any net proceed thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

SEC. 23 – Suspension of Work

The Owner may at any time suspend the work, or any part thereof by giving 1 days' notice to the Contractor in writing. The work shall be resumed by the Contractor within ten (10) days after the date fixed in the written notice from the Owner to the Contractor so to do. The Owner may reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of such suspension, eligibility and amount of reimbursement to be determined by the Engineer.

The contractor may at the Owner's option, be allowed an increase in the contract price or an extension of the contract time, or both; directly attributable to any suspension if Contractor demonstrates an approved claim. Any increases or decreases in the contract price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding or sealed proposals and change orders.

If the work, or any part thereof, shall be stopped by notice in writing aforesaid, and if the Owner does not give notice in writing to the Contractor to resume work at a date within 15 days of the date fixed in the written notice to suspend, then the contractor may abandon that portion of the work so suspended and he will be entitled to the estimates and payment for all work done on the portions so abandoned.

SEC. 24 – The Owner’s Right to Terminate Contract

If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed as a result of his insolvency, or if he should be guilty of a substantial violation of the contract, then the Owner, upon the certificate of the Engineer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor and his Surety seven days’ written notice terminate the employment of the Contractor and take possession of the premises and of all materials, tools, equipment and other facilities installed on the work and paid for by the Owner, and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor’s default, shall be certified by the Engineer.

SEC. 25 – Contractor’s Right to Stop Work or Terminate Contract

If the work should be stopped under an order of any court, or other public authority, for a period of more than three months, through no act or fault of the contractor or of anyone employed by him, or if the Engineer should fail to issue any estimate for payment within seven days after it is due, or if the Owner should fail to pay the Contractor within seven days of its maturity then the Contractor may, upon seven days’ written notice to the Owner and the Engineer, stop work.

SEC. 26 – Removal of Equipment

In the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment and supplies from the property of the Owner, failing which the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor.

SEC. 27 – Responsibility for Work

The Contractor assumes full responsibility for the work. Until its final acceptance, the Contractor shall be responsible for damage to or destruction of the work (except for any part covered by partial acceptance as set forth in Sec. 28): He agrees to make no claims against the Owner for damages to the work from any cause.

Existing Structures : The Contractor shall, at his own expense immediately make permanent repairs and restore to original condition any structure that are to remain in place and damaged by the Contractor's equipment or workmen during the performance of work under this contract or damaged as a result of improperly executed work.

Traffic Areas, Driveways, Entrances : All traffic areas, driveways and entrances shall be restored to usable condition at the Contractor's expense as the work progresses. The Contractor shall make every effort to cooperate with the wishes of the individual property owners in providing access to private property along the site of the work.

Detours : The contractor shall do such work as may be necessary to provide and maintain a detour adjacent to all road structures for public travel. The Contractor shall maintain the detours in such condition that the public can travel over same in comfort and safety, and shall at his own expense perform such work as may be required to keep said detours open to the public at all times. The Contractor shall cooperate with the Engineer in the regulation of traffic and shall so govern his work that when it becomes necessary to suspend construction for a considerable period of time, the roadways will be re-opened to public travel. Material and equipment shall be stored and work shall be so conducted as to obstruct public travel as little as possible, and in no case shall there be less than eighteen (18) foot in width of obstructed roadway for the use of traffic shall be protected with barricades, flags and markers in conformance with the Texas Manual of Uniform Traffic Control Devices. (TMUTCD)

Barricades and Danger Warning and Detour Signs : When any section of the construction site is closed to traffic, the Contractor shall furnish and maintain at each end of the closed section and at all intersecting barricades, adequate warning directional signs. If at any time the barricades are not, in the opinion of the Engineer, sufficient to prevent traffic from entering the closed portions of the street-road-construction site, the Contractor shall provide and maintain watchmen at such points and for such periods of time as the Engineer may direct. When directed by the Engineer or required by the (TMUTCD), the Contractor shall provide and maintain such standard barricades, signs, lights and flags within the closed portion of the street-road- construction site as may be necessary to protect the work and safeguard local traffic.

No direct compensation except as specifically provided in these specifications will be made to the Contractor for the work and material involved in constructing, and maintaining detours and approaches; furnishing installing and maintaining barricades, danger, warning, and detour signs and their subsequent removal; and all other incidentals necessary for the proper direction, safety, and convenience of traffic during the Contract period, as this work is to be considered subsidiary to the several items for which unit prices are requested in the proposal.

SEC. 28 – Partial Completion and Acceptance

If at any time prior to the issuance of the final certificate referred to in Section 42 hereinafter, any portion of the permanent construction has been satisfactorily completed, and if the Engineer determines that such portion of the permanent construction is not required for the operations of the Contractor but is needed by the Owner, the Engineer shall issue to the Contractor a certificate of partial completion, and thereupon or at any time thereafter the Owner may take over and use the portion of the permanent construction described in such certificate, and exclude the Contractor therefrom.

The issuance of a certificate of partial completion shall not be constructed to constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates if he has failed to complete it in accordance with the terms of this contract. The issuance of such a certificate shall not operate to release the Contractor or his sureties from any obligations under this contract or the performance bond.

If any prior use increases the cost of or delay the work, the Contractor shall be entitled to extra compensation, or extension of time, or both, as the Engineer may determine, unless otherwise provided.

SEC. 29 – Payments Withheld Prior to Final Acceptance of Work

The Owner, as a result of subsequently discovered evidence, may withhold or nullify the whole or part of any payment certificate to such extent as may be necessary to protect himself from loss caused by:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor.
- (c) Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- (d) Damage to another contractor.

When the above grounds are removed or the Contractor provides a Surety Bond satisfactory to the Owner which will protect the Owner in the amount withheld, payment shall be made for amounts withheld, because of them.

No money may be withheld under (b) and (c) above if a payment bond is included in the Contract.

SEC. 30 – Assignment

Neither party to the Contract shall assign the Contractor or sublet is as a whole without the written consent of the other, nor shall the Contractor assign any moneys due to him or to become due to him hereunder, except to bank or financial institution acceptable to the Owner.

SEC. 31 – Rights of Various Interests

Whenever work being done by the Owner's or by other contractor's forces is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Engineer, to secure the completion of the various portions of the work in general harmony.

SEC. 32 – Separate Contracts

The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

If the proper execution or results of any part of the Contractor's work depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results.

SEC. 33 – Subcontracts

The Contractor shall, as soon as practicable after signing of the Contract, notify the Engineer in writing of the names of Subcontractors proposed for the work.

The Contractor agrees that he is fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions or persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.

SEC. 34 – Engineer’s Status

The Engineer shall perform technical inspection of the work. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the contract. He shall also have authority to reject all work and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

SEC. 35 – Engineer’s Decisions

The Engineer shall, within a reasonable time after their presentation to him, make decisions in writing on all claims of the Owner or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

SEC. 36 – Land of Work

The Contractor shall provide as indicated on Drawings No. – N/A and not later than the date when needed by the Contractor the lands upon which the work under this Contract is to be done, rights of way for access to same, and such other lands which are designated on the Drawings for the use of the Contractor. Such lands and rights of ways shall be adequate for the performance of the Contract. Any delay in the furnishing of these lands by the Owner shall be deemed proper cause for an equitable adjustment in both Contract price and time of completion.

The Contractor shall provide at his own expense and without liability to the Owner any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials.

SEC. 37 – Cleaning Up

The Contractor shall remove at his own expense from the Owner’s property and from all public and private property all temporary structures, rubbish and waste materials resulting from his operations. This requirement shall not apply to property used for permanent disposal of rubbish or waste materials.

SEC. 38 – General Guaranty

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall guarantee all material and equipment furnished and Work performed for a period of one (1) year from the date of Substantial Completion. The Contractor warrants and guarantees for a period of one (1) year from the date of Substantial Completion of the system that the completed system is free from all defects due to faulty material or workmanship and the Contractor shall promptly make such correction as may be necessary be reason of such defects including the repairs of any damage to other parts of the system or other work resulting from such defects.

The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

SEC. 39 – Shop Drawings

The approval of (shop) drawings by the Engineer shall not construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the contractor of the responsibility for any error which any exist as the contractor shall be responsible for the dimensions and design of adequate connections, details and satisfactory construction of all work.

SEC. 40 – Testing

A testing allowance will be a part of the contract to cover costs of testing authorized by the Engineer. All tests that meet specifications will be paid out of this allowance. All failing tests will be paid directly by the Contractor.

SEC. 41 – Additional Insureds

The Contractor shall name the OWNER & ENGINEER as added insured on all insurance policies required under the contract. The Contractor shall hold the OWNER & ENGINEER harmless for claims resulting from the Contractors' work. The Contractor shall defend all claims against the OWNER & ENGINEER resulting from the Contractor's work.

SEC. 42 – Contractor's Duty and Superintendence

The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the CONTRACTOR in his absence and all direction given to him shall be as binding as if given to the CONTRACTOR.

The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements, the OWNER and ENGINEER being interested only in the result obtained and conformity of such completed improvements to the plans, specifications and contract.

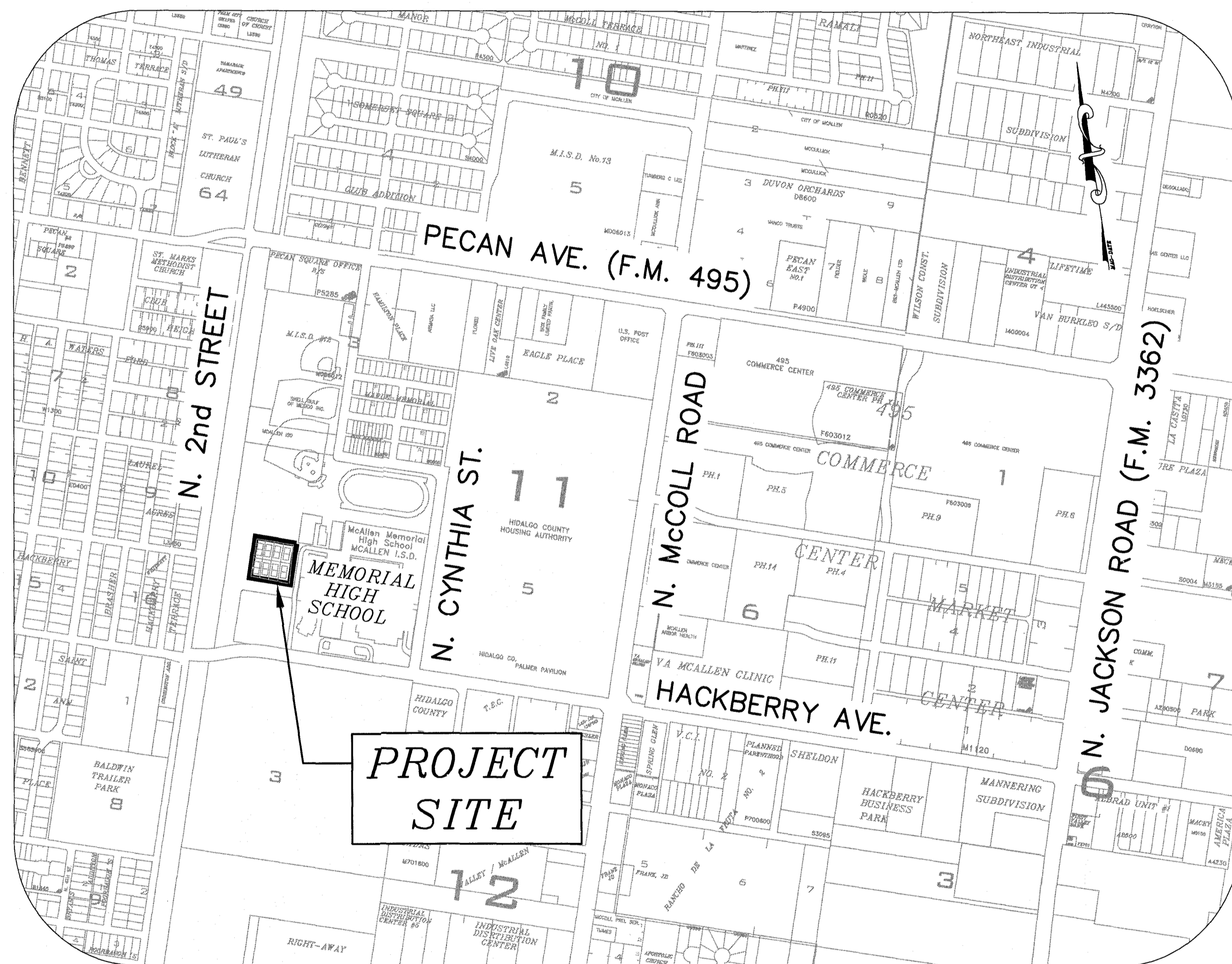
Likewise, the CONTRACTOR shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and the property or himself or any other person, as a result of his operations hereunder. Engineering construction drawings, and specifications and as well as any additional information concerning the work to be performed passing from or through the ENGINEER shall not be interpreted as requiring or allowing CONTRACTOR to deviate from the plans and specifications, the intent of such drawings, specifications and any other such instruction being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable, at his own expense, for design, construction, installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to person or property, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

Any review of work in process, or any visit or observation during construction, or any clarification of plans and specifications, by the ENGINEER, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or method, is agreed by the CONTRACTOR to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications purpose of enabling CONTRACTOR to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for the proper performance of his work on the project, including but without limitation the propriety of means and methods of the CONTRACTOR in performing said contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Deviation by the CONTRACTOR from plans and specification that may have been in evidence during any such visitation or observation by the ENGINEER, or any of his representatives, whether called to the CONTRACTOR'S attention or not shall in no way relieve CONTRACTOR from his responsibility to complete all work in accordance with said plans and specifications.

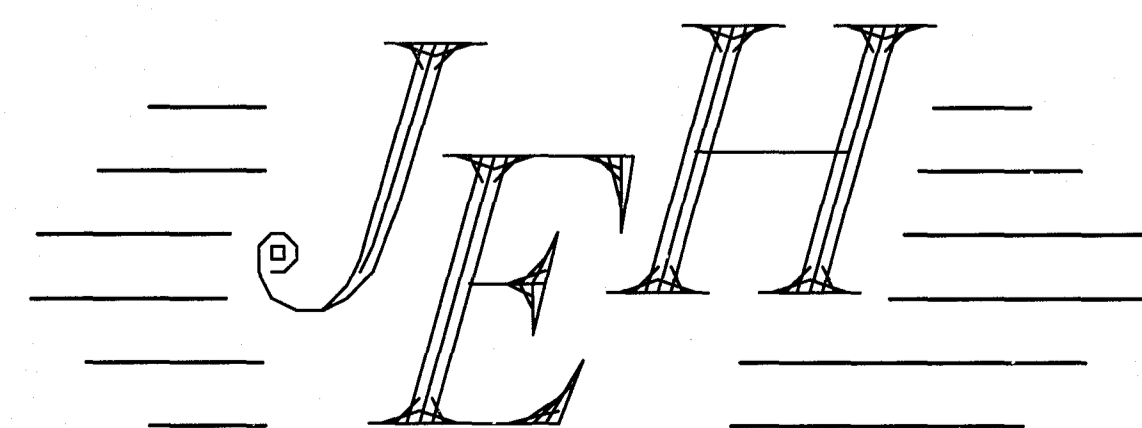
CONSTRUCTION PLANS FOR

McALLEN I.S.D. TENNIS COURT IMPROVEMENTS RESURFACING PROJECT MEMORIAL HIGH SCHOOL

FOR
McALLEN, TEXAS



LOCATION MAP
N.T.S.



INDEX OF SHEETS

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1	GENERAL NOTES
2	EXISTING PARTIAL SITE, UTILITY AND TOPOGRAPHIC LAYOUT
3	PROPOSED SITE PLAN
4	PROPOSED TYPICAL DIMENSION PLAN

McALLEN I.S.D. BOARD OF TRUSTEES

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JAVIER HINOJOSA ENGINEERING

CONSULTING ENGINEERS
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TBPELS FIRM No. F-1295



SEPTEMBER, 2020

GENERAL NOTES:

- THE CONTRACTOR SHALL VISIT SITE TO INSPECT EXISTING CONDITIONS WITH REGARD TO THE SCOPE OF WORK PRIOR TO SUBMITTING A BID FOR THE WORK.
- WORK IS TO BE PERFORMED BY PERSONNEL AND COMPANIES WITH EXPERIENCE IN APPLYING TENNIS COURT SURFACING WITH REFERENCES AVAILABLE UPON REQUEST.
- MATERIALS AND APPLICATION METHOD MUST BE SYSTEM TESTED AND APPROVED BY THE MANUFACTURER OF THE SURFACING MATERIALS.
- SURFACING TO BE A COMPLETE SYSTEM INCLUSIVE OF ALL COATINGS NECESSARY FOR A COMPLETE AND FINISHED JOB. SYSTEM AND ALL INCLUDED COMPONENTS AND COATINGS TO BE BY A SINGLE MANUFACTURER.
- ALL COMPONENTS OF THE SURFACING SYSTEM TO BE APPLIED IN STRICT ACCORDANCE WITH MANUFACTURER'S REQUIREMENTS AND RECOMMENDATIONS.
- CONTRACTOR TO FURNISH MANUFACTURERS' PRINTED INSTRUCTIONS FOR APPLICATION OF MATERIALS PRIOR TO ANY WORK BEING PERFORMED.
- THE CONTRACTOR TO PROVIDE COLOR AND CARDS OF MANUFACTURER'S STANDARD COLORS TO ENGINEER FOR OWNER'S SELECTION.
- NO PHASE OF THIS APPLICATION SHALL TAKE PLACE UNLESS BOTH AMBIENT AND MATERIAL TEMPERATURES ARE ABOVE 50° F (10° C); NOR WHEN RAIN IS IMMINENT OR FALLING; NOR WHEN CONDITIONS ARE OTHERWISE UNSUITABLE.
- THE INSTALLER OF THE TENNIS COURT SURFACING SHALL GUARANTEE IN WRITING THAT THE SYNTHETIC SURFACES WILL BE FREE OF MATERIAL AND INSTALLATION DEFECTS FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF ACCEPTANCE BY THE OWNER. THE CONTRACTOR SHALL REPLACE DEFECTIVE WORK OR MATERIALS AT NO COST TO THE OWNER DURING THE ONE (1) YEAR GUARANTEE PERIOD.
- TENNIS COURT RESURFACING PRODUCTS TO BE WORLD CLASS TENNIS COURT SURFACING PRODUCTS OR EQUAL.
- SURFACE COLORS TO BE SELECTED BY THE OWNER PRIOR TO APPLICATION OF COLOR SCHEMES.
- THE CONTRACTOR SHALL CAREFULLY EXAMINE ALL SURFACES AND CONDITIONS FOR THE APPLICATION OF THE TENNIS COURT SURFACING SYSTEM. THE CONTRACTOR SHALL CORRECT ALL DEFECTS BEFORE PROCEEDING WITH THE WORK.
- THE CONTRACTOR SHALL EXAMINE SUBSTRATE FOR CONDITIONS WHICH WILL ADVERSELY AFFECT ANY COMPONENT OF THIS SYSTEM. APPLICATION OF ANY WORK, UNDER THIS CONTRACT, WILL BE CONSIDERED AS EVIDENCE OF ACCEPTANCE OF THE INSTALLATION AND ITS APPROVAL BY THE CONTRACTOR.
- CLEAN ALL EXISTING SURFACES TO BE RESURFACED, OF DUST, DIRT, DEBRIS AND LOOSE MATERIALS. CRACKS SHALL BE BLOWN CLEAN WITH AN AIR COMPRESSOR. LOOSE OR FLAKED MATERIALS SHALL BE REMOVED WITH GRINDING EQUIPMENT. HIGH PRESSURE WATER CAN ALSO BE USED TO CLEAN AND PREPARE SURFACES. REPAIR CRACKS AND OTHER SURFACE DEFECTS IN STRICT ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS.
- ALL DETAILS OF INSTALLATION TO CONFORM TO MANUFACTURER'S RECOMMENDATIONS.
- CONTRACTOR TO OBTAIN INSPECTION AND APPROVAL OF THE ENGINEER OF THE COURT SURFACING APPLICATION PRIOR TO PAINTING AND STRIPING.
- CONTRACTOR TO APPLY LINE PAINT AFTER FINISH COAT HAS BEEN ALLOWED TO DRY AS PER MANUFACTURER'S RECOMMENDATIONS. LINES SHALL BE 2" WIDE, WHITE. LINES TO BE ACCURATELY LOCATED AS INDICATED ON THE DRAWINGS AND IN CONFORMANCE WITH U.I.L. GUIDELINES FOR SINGLES AND DOUBLE COURT. LINES SHALL BE STRAIGHT WITH SHARP, UNIFORM EDGES.
- CONTRACTOR SHALL NOT PAINT IN WET OR WINDY CONDITIONS.
- CONTRACTOR TO REQUEST INSPECTION OF THE FINAL INSTALLATION WITH THE ENGINEER AND OWNER. THE CONTRACTOR SHALL CORRECT ANY DEFICIENCIES DISCOVERED AND SHALL REMOVE MATERIALS FOREIGN TO THE FINISH APPLICATION AND CLEAR THE SITE OF CONSTRUCTION DEBRIS.
- PRIOR TO PROJECT CLOSEOUT, CONTRACTOR TO PROVIDE TO ENGINEER AND OWNER (IN TRIPLICATE) MANUFACTURER'S WRITTEN PROCEDURES AND GUIDELINES FOR SURFACING MAINTENANCE.
- LIMITS OF CONSTRUCTION AND CONSTRUCTION STAGING AREA TO BE IN THE VICINITY OF THE TENNIS COURTS TO BE RESURFACED. THE CONTRACTOR SHALL COORDINATE WITH ENGINEER TO DETERMINE STAGING AREA FOR CONSTRUCTION OPERATIONS AND LIMITS OF CONSTRUCTION AT EACH SCHOOL CAMPUS PRIOR TO MOVING IN.
- IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO LOCATE UNDERGROUND UTILITIES. WHETHER SHOWN OR NOT SHOWN ON THE DRAWINGS, SUFFICIENTLY IN ADVANCE OF OPERATIONS TO PRECLUDE DAMAGE TO SAME.
- WATER, SEWER, OR OTHER UTILITY SERVICES SHALL NOT BE INTERRUPTED. ANY DAMAGES TO EXISTING UTILITIES WILL BE THE CONTRACTOR'S RESPONSIBILITY.
- IN THE EVENT OF DAMAGE TO UNDERGROUND FACILITIES, WHETHER SHOWN OR NOT SHOWN IN THE DRAWINGS, THE CONTRACTOR SHALL MAKE THE NECESSARY REPAIRS TO PLACE THE FACILITIES BACK IN SERVICE AT NO INCREASE IN THE CONTRACTOR'S PRICE AND ALL SUCH REPAIRS SHALL CONFORM TO THE REQUIREMENTS OF THE COMPANY OR AGENCY SERVICING THE FACILITY.
- THE CONTRACTOR SHALL EXERCISE EXTRA CARE TO PREVENT DAMAGE TO ALL OTHER STRUCTURES IN THE AREA INCLUDING BUILDINGS, FENCES, ROADS, PIPELINES, UTILITIES, ETC., WHETHER PUBLICLY OR PRIVATELY OWNED.
- UNTIL ACCEPTANCE BY THE ENGINEER OF ANY PART OR ALL OF THE CONSTRUCTION, AS PROVIDED FOR IN THE PLANS AND THESE SPECIFICATIONS, IT SHALL BE UNDER THE CHARGE AND CARE OF THE CONTRACTOR, AND HE SHALL TAKE EVERY NECESSARY PRECAUTION AGAINST INJURY OR DAMAGE TO ANY PART OF THE WORK. THE CONTRACTOR SHALL REBUILD, REPAIR, RESTORE AND MAKE GOOD, AT HIS OWN EXPENSE, ALL INJURIES OR DAMAGE TO ANY PORTION OF THE WORK BEFORE ITS COMPLETION AND ACCEPTANCE.
- NO OPEN TRENCHES OR EXCAVATION SHALL BE LEFT OPEN OVERNIGHT.
- CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL PERMITS REQUIRED FOR THIS PROJECT FROM CITY OF McALLEN.
- CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATION OF REMOVAL AND/OR RELOCATION OF GAS VALVES, WATER METERS OR IRRIGATION VALVES.
- CONTRACTOR TO COORDINATE ALL WORK WITH MR. RUBEN TREVIÑO, EXECUTIVE DIRECTOR FOR FACILITIES, MAINTENANCE AND OPERATIONS, McALLEN I.S.D. (956-632-3200) PRIOR TO START OF CONSTRUCTION.
- ALL DRIVEWAYS AND SIDEWALKS DAMAGED TO BE RECONSTRUCTED WITH EXISTING LIKE MATERIALS TO BE MINIMUM OF THE FOLLOWING:

ASPHALT DRIVEWAYS : 8" FLEX BASE AND 2" H.M.A.C.
 CONCRETE DRIVEWAYS : 6" REINFORCED CONCRETE (3,500 P.S.I.)
 CALICHE DRIVES : 8" FLEX BASE - 95% COMPACTED DENSITY
 CULVERTS : 18" R.C.P.

GENERAL NOTES (CONT):

- ALL EXISTING PAVEMENT THAT IS DAMAGED TO BE REPLACED WITH 8" FLEX AND 2" H.M.A.C. AND ALL EDGES TO BE SAW CUT.
- CONTRACTOR TO PROVIDE TRAFFIC CONTROL PLAN FOR ALL IMPROVEMENTS APPROVED BY McALLEN I.S.D. AND ENGINEER.
- PROPER SEDIMENT CONTROL DEVICES SHALL BE UTILIZED DURING CONSTRUCTION ON ALL DRAINAGE STRUCTURES. ALL GRATE INLETS SHALL HAVE FILTER FABRIC INLET PROTECTION TO PREVENT SOIL EROSION INTO THE DRAINAGE SYSTEM.
- CONTRACTOR TO PROVIDE AND MAINTAIN TEMPORARY GRAPHIC CONSTRUCTION SIGNS, DIRECTIONAL SIGNS AND ANY OTHER SIGNS THAT MAY BE REQUIRED DURING CONSTRUCTION.
- ALL WORK SHALL BE COMPLETED TO THE SATISFACTION OF McALLEN I.S.D. AND JAVIER HINOJOSA ENGINEERING.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR CONTACTING McALLEN I.S.D. 48 HOURS PRIOR TO COMMENCEMENT OF WORK @ (956) 632-3200 TO COORDINATE AND MEET ANY ADDITIONAL REQUIREMENTS AND/OR SPECIFICATIONS.
- THE CONTRACTOR SHALL BE RESPONSIBLE TO CALL DIG TESS 48 HOURS PRIOR TO COMMENCEMENT OF WORK FOR UTILITY SPOTTING @ (1-800-DIG-TESS).
- LOCATIONS OF UNDERGROUND FACILITIES ARE FROM BEST INFORMATION AVAILABLE. NEITHER THE OWNER OR ENGINEER, WARRANT THE ACCURACY OF THE INFORMATION PROVIDED. ANY DEVIATIONS SHALL BE CALLED TO THE ENGINEER'S ATTENTION IMMEDIATELY.
- THE CONTRACTOR IS RESPONSIBLE FOR COORDINATING WITH THE CORRESPONDING UTILITY CORPORATION IN REGARDS TO THE RELOCATION/ADJUSTING OF ANY CONFLICTING UTILITIES. THE RELOCATION/ADJUSTMENT SHALL BE CONSIDERED SUBSIDIARY TO THE PROJECT COST AND REFLECTED IN THE UNIT BID PRICES FOR VARIOUS ITEMS LISTED IN THE PROPOSAL.
- THE CONTRACTOR SHALL PROVIDE ACCESS TO EXISTING BUILDINGS AT ALL TIMES.
- ANY DAMAGES TO FENCES, WALKS, OR PRIVATE PROPERTY SHALL BE REPAIRED BY THE CONTRACTOR AT HIS EXPENSE
- NO OPEN EXCAVATION SHALL BE LEFT OPEN OVERNIGHT. ALL EXCAVATIONS WHICH CANNOT BE BACKFILLED OVERNIGHT SHALL BE COVERED. AS A MINIMUM, WITH STEEL PLATING WHEN IN PAVED AND UNPAVED AREAS SUBJECT TO VEHICULAR LOADING; PLYWOOD, WOOD PLANKING WITH O.S.H.A. ORANGE PLASTIC EXPANDED MESH BARRIER AROUND PERIMETER IN UNPAVED AREAS NOT SUBJECT TO VEHICULAR LOADING, OR AS APPROVED BY THE ENGINEER.
- THE PREPARATION OF THESE PLANS REFLECTS INFORMATION, PROVIDED BY OTHERS, ON THE APPROXIMATE LOCATION AND EXISTENCE OF EXISTING UTILITY AND ADJACENT PHYSICAL FEATURES. HOWEVER, THEY DO NOT IMPLY OR AFFIRM THAT ALL UTILITIES OR PHYSICAL FEATURES ARE SHOWN. GENERALLY, UTILITY SERVICE CONNECTIONS ARE NOT INDICATED ON THESE PLANS. CONTRACTOR IS RESPONSIBLE FOR NOTIFICATIONS OF THE OWNER IMMEDIATELY UPON ENCOUNTERING UNFORESEEN CONFLICTS.
- THE APPROXIMATE LOCATIONS OF KNOWN EXISTING UTILITIES ARE SHOWN, CONTRACTOR SHALL DETERMINE THE EXACT HORIZONTAL AND VERTICAL LOCATIONS IN THE FIELD PRIOR TO COMMENCING WORK. CONTRACTOR TO BE FULLY RESPONSIBLE FOR DAMAGES WHICH MIGHT OCCUR BY HIS FAILURE TO EXACTLY LOCATE AND PRESERVE EXISTING UTILITIES.
- PUBLIC AND PRIVATE UTILITY LINES AND CUSTOMER SERVICE LINES MAY EXIST THAT ARE NOT SHOWN ON THE CONSTRUCTION DRAWINGS. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO LOCATE, MAINTAIN AND PROTECT THE INTEGRITY OF THESE LINES. HAND EXCAVATION MAY BE REQUIRED. THE CONTRACTOR SHALL RESTORE RELOCATED OR DIVERTED UTILITY TO ITS ORIGINAL CONDITION AND LOCATION WHEN APPLICABLE UPON COMPLETION OF CONSTRUCTION. SAID RESTORATION SHALL BE CONSIDERED SUBSIDIARY TO THE PROJECT COST AND REFLECTED IN THE UNIT BID PRICES FOR VARIOUS ITEMS LISTED IN THE PROPOSAL.
- THE CONTRACTOR TO MAINTAIN ALL EQUIPMENT AND TRANSPORTATION OF SAID EQUIPMENT WITHIN SCHOOL PROPERTY.
- CONSTRUCTION OF THE PROPOSED IMPROVEMENTS TO MATCH EXISTING ELEVATIONS TO INSURE POSITIVE DRAINAGE AS PRESENTLY EXISTS.
- ALL SIDEWALKS AND HANDICAP RAMPS CONNECTING TO PAVED DRIVES SHALL BE IN COMPLIANCE WITH A.D.A. REQUIREMENTS.
- CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING ADEQUATE DRAINAGE OF PROPOSED FACILITIES AT ALL TIMES DURING CONSTRUCTION.
- THE CONTRACTOR SHALL PROVIDE/MAINTAIN ADEQUATE POSITIVE DRAINAGE AT ALL TIMES DURING THE INSTALLATION OF THE STRUCTURES, DRAINAGE, UTILITY, IRRIGATION AND ROAD IMPROVEMENTS. DEWATERING OF THE TRENCH MAY BE REQUIRED DURING THE INSTALLATION OF THE DRAINAGE, UTILITY AND IRRIGATION FACILITIES/STRUCTURES. SAID DEWATERING SHALL BE CONSIDERED SUBSIDIARY TO THE PROJECT COST AND REFLECTED IN THE UNIT BID PRICES FOR VARIOUS ITEMS LISTED IN THE PROPOSAL.
- THE CONTRACTOR SHALL CLEANUP AND RESTORE THE AREA OF OPERATIONS TO A CONDITION AS GOOD AS OR BETTER THAN THAT WHICH EXISTED PRIOR TO INSTALLATION OF ALL ITEMS TO BE CONSTRUCTED.
- ALL DEBRIS, VEGETATION AND SURPLUS MATERIAL, RESULTING FROM DEMOLITION AND/OR CLEARING OF THE RIGHT-OF-WAY IN PREPARATION OF PROPOSED IMPROVEMENTS SHALL BECOME PROPERTY OF THE CONTRACTOR AND SHALL BE PROPERLY DISPOSED OF AT A SITE ACCEPTABLE TO HIDALGO COUNTY DRAINAGE DISTRICT NO 1. THE CONTRACTOR SHALL PROVIDE A LETTER STATING SO. THIS SHALL BE INCIDENTAL AND NOT A SEPARATE PAY ITEM UNLESS STATED SO. NO EXCESS EXCAVATED MATERIAL SHALL BE DEPOSITED IN LOW AREAS OR ALONG NATURAL DRAINAGE WAYS WITHOUT WRITTEN PERMISSION FROM THE AFFECTED PROPERTY OWNER AND THE HIDALGO COUNTY DRAINAGE DISTRICT No 1. IF THE CONTRACTOR PLACES EXCESS MATERIAL IN THE AREAS WITHOUT WRITTEN PERMISSION, HE WILL BE RESPONSIBLE FOR ALL DAMAGE RESULTING FROM SUCH FILL AND CONTRACTOR SHALL REMOVE THE MATERIAL AT OWN COST.
- THE CONTRACTOR SHALL BE RESPONSIBLE TO FOLLOW ALL T.C.E.Q. STORM WATER POLLUTION PREVENTION PLAN (SWP3) REQUIREMENTS AS PER SWP3 SHEETS AND AS STATED IN TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM CONSTRUCTION GENERAL PERMIT (TIDES TXR150000, EFFECTIVE DATE MARCH 5, 2008), INCLUDING N.O.I. SUBMITTAL AND MS4 NOTIFICATION.
- ALL PROPOSED CONCRETE WORK TO BE REINFORCED WITH #4 STEEL REBAR AND CONCRETE STRENGTH TO BE 3,000 PSI.
- THE ENGINEER WILL PROVIDE CONTROL POINTS (BENCHMARK AND PROPERTY CORNERS) FOR THE WORK TO BE PERFORMED BY THE CONTRACTOR. CONTRACTOR SHALL BE RESPONSIBLE FOR CONSTRUCTION STAKING, INCLUDING BUT NOT LIMITED TO HORIZONTAL & VERTICAL GRADE CUTS FOR CURB & GUTTER, ROADWAY, STORM DRAIN PIPE, ROADSIDE DITCHES, DRIVEWAY CULVERTS AND DITCH WORK.

GENERAL NOTES (CONT):

- THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REPLACEMENT/RELOCATION OF ALL REGULATORY SIGNS REMOVED DUE TO CONSTRUCTION OPERATIONS WITH THE SAME SIGN ON FIXED SUPPORT(S) IMMEDIATELY UPON ITS REMOVAL. APPROVAL BY THE ENGINEER IS NECESSARY BEFORE REMOVING ANY REGULATORY ROADWAY SIGN(S). FLAGGERS ARE REQUIRED TO BE AVAILABLE TO DIRECT TRAFFIC DURING SIGN INTERMEDIATE DOWN TIME. RELOCATION OF ANY DIRECTIONAL SIGN ASSEMBLIES REMOVED DURING CONSTRUCTION OPERATIONS IMMEDIATELY UPON THEIR REMOVAL IS REQUIRED. THESE SIGNS SHALL BE RELOCATED TO A LOCATION IN ACCORDANCE WITH THE LATEST VERSION OF THE "TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES". IN NO CASE WILL A SIGN BE REMOVED WITHOUT A REPLACEMENT SIGN AND SUPPORT(S) BEING READILY AVAILABLE AND A LOCATION ESTABLISHED. REMOVAL AND RELOCATION OF THESE SIGNS WILL NOT BE PAID FOR DIRECTLY, BUT SHALL BE CONSIDERED SUBSIDIARY TO THE PROJECT COST REFLECTED IN THE UNIT BID PRICES FOR VARIOUS ITEMS LISTED ON THE PROPOSAL.
- ALL CONSTRUCTION OPERATIONS SHALL BE CONDUCTED TO PROVIDE THE LEAST POSSIBLE INTERFERENCE TO TRAFFIC AS PROVIDED FOR IN THE SPECIFICATIONS, TxDOT STANDARDS, TEXAS M.U.T.C.D. AND/OR AS DIRECTED. ALL TRAFFIC CONTROL DEVICES SHALL CONFORM TO THE CURRENT EDITION OF THE "TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES".

EROSION CONTROL NOTES

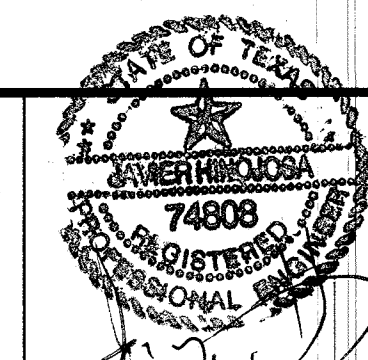
- THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) AND ENVIRONMENTAL PROTECTION AGENCY (EPA) REQUIRE EROSION AND SEDIMENTATION CONTROL FOR CONSTRUCTION. CONTRACTOR SHALL PROVIDE ALL REQUIRED EROSION AND SEDIMENTATION CONTROL. CONTRACTOR SHALL BE RESPONSIBLE FOR IMPLEMENTATION OF THE STORM WATER POLLUTION PREVENTION PLAN.
- AT A MINIMUM THESE CONTROLS SHALL CONSIST OF ROCK BERMS AND/OR SILT FENCES CONSTRUCTED PARALLEL TO AND DOWN GRADIENT FROM THE TRENCHES. THE ROCK BERM OR SILT FENCES SHALL BE INSTALLED IN A MANNER SUCH THAT ANY RAINFALL RUNOFF SHALL BE FILTERED. HAY BALES SHALL NOT BE USED FOR TEMPORARY EROSION AND SEDIMENTATION CONTROLS.
- ALL SLOPES SHALL BE SADDLED OR SEEDED WITH APPROVED GRASS, GRASS MIXTURES OR GROUND COVER SUITABLE TO THE AREA AND SEASON IN WHICH THEY ARE APPLIED.
- THE CONTRACTOR SHALL INSPECT THE CONTROLS AT WEEKLY INTERVALS AND AFTER EVERY SIGNIFICANT RAINFALL TO INSURE DISTURBANCE TO THE STRUCTURES HAS NOT OCCURRED. SEDIMENT DEPOSITED AFTER A RAINFALL SHALL BE REMOVED FROM THE SITE OR PLACED IN AN APPROVED DESIGNATED SOIL DISPOSAL AREA.
- EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE EMPLOYED DURING CONSTRUCTION TO PREVENT POINT SOURCE SEDIMENTATION LOADINGS OF DOWNSTREAM FACILITIES. SUCH INSTALLATIONS SHALL BE REGULARLY INSPECTED BY THE CONTRACTOR FOR EFFECTIVENESS. ADDITIONAL MEASURES MAY BE REQUIRED IF, IN THE OPINION OF THE OWNER, THEY ARE WARRANTED.
- ALL TEMPORARY EROSION AND SEDIMENTATION CONTROLS SHALL BE IMPLEMENTED BEFORE CONSTRUCTION COMMENCES, SHALL BE MAINTAINED DURING CONSTRUCTION, AND SHALL BE REMOVED WHEN VEGETATION IS ESTABLISHED AND THE CONSTRUCTION AREA IS STABILIZED. ADDITIONAL PROTECTION MAY BE NECESSARY IF EXCESSIVE SOLIDS ARE BEING DISCHARGED FROM THE SITE.
- ALL TEMPORARY EROSION AND SEDIMENTATION CONTROLS SHALL BE REMOVED BY THE CONTRACTOR AT FINAL ACCEPTANCE OF THE PROJECT BY THE OWNER.
- ALL STAGING, MATERIAL STORAGE, STOCKPILE AND REFUSE AREAS SHALL REQUIRE APPLICABLE EROSION AND SEDIMENT CONTROL MEASURES.
- ALL CONSTRUCTION DEBRIS SHALL BE CONTAINED WITHIN APPROPRIATE RECEPTACLES (ROLL-OFF CONTAINERS, DUMPSTERS, TRASH CANS, WIRE-MESH CAGES, ETC.) AND CONFINED WITHIN PERIMETER EROSION AND SEDIMENT CONTROLS.
- THE CONTRACTOR MAY REFER TO THE TEXAS DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR CONSTRUCTION AND MAINTENANCE OF HIGHWAYS, STREETS, AND BRIDGES (2004 EDITION) ITEM 164, "SEEDING FOR EROSION CONTROL" AND ITEM 168, "VEGETATIVE WATERING" FOR VEGETATIVE STABILIZATION SPECIFICATIONS.
- DUST CONTROL SHALL BE IMPLEMENTED AS NECESSARY OR AS DIRECTED BY THE ENGINEER. DUST CONTROL MAY CONSIST OF WATERING OR OTHER METHODS APPROVED BY THE PROJECT ENGINEER.
- ALL DISCHARGES ASSOCIATED WITH DEWATERING OPERATIONS SHALL IMPLEMENT APPROPRIATE EROSION AND SEDIMENT CONTROL MEASURES. MEASURES MAY INCLUDE BUT ARE NOT LIMITED TO SEDIMENTATION BASINS OR FILTER SOCKS.
- CONCRETE WASH-WATER SHALL NOT BE DISCHARGED DIRECTLY INTO A STORM SEWER SYSTEM OR RECEIVING STREAM. ALL WASH ACTIVITIES MUST BE PERFORMED WITHIN THE EXTENTS OF ESTABLISHED EROSION AND SEDIMENT CONTROL MEASURES OR DESIGNATED AREAS APPROVED BY PROJECT ENGINEER.
- SEDIMENT SHALL BE CLEARED FROM ALL STORM SEWER PIPES, CULVERTS AND APPURTENANCES WITHIN THE LIMITS OF CONSTRUCTION PRIOR TO FINAL PROJECT ACCEPTANCE. SEDIMENT SHALL BE PROPERLY DISPOSED.

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	DATE SEPTEMBER, 2020
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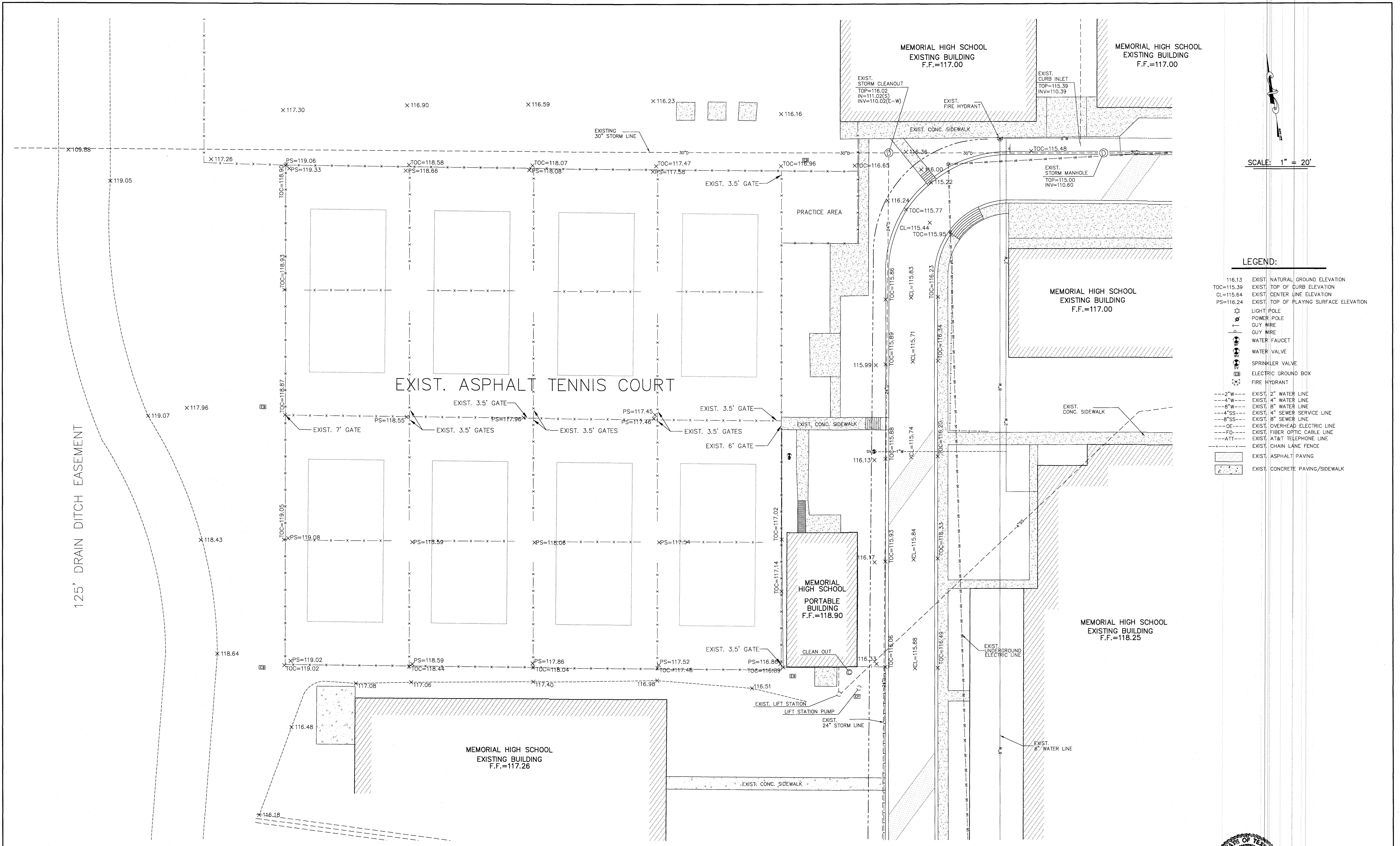


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GENERAL NOTES
 McALLEN I.S.D. TENNIS COURT IMPROVEMENTS
 MEMORIAL HIGH SCHOOL-RESURFACING PROJECT
 McALLEN, TEXAS



SHEET 1
 OF 4 SHEETS
 200502

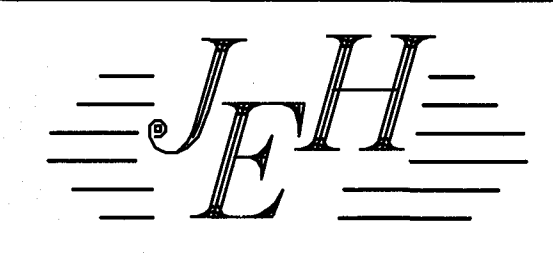


SCALE: 1" = 20'

- LEGEND:**
- 116.13 EXIST. NATURAL GROUND ELEVATION
 - TOC=115.39 EXIST. TOP OF CURB ELEVATION
 - CL=115.64 EXIST. CENTER LINE ELEVATION
 - PS=116.24 EXIST. TOP OF PLAYING SURFACE ELEVATION
 - ★ LIGHT POLE
 - ⊕ POWER POLE
 - GUY WIRE
 - GUY WIRE
 - ⊕ WATER FAUCET
 - ⊕ WATER VALVE
 - ⊕ SPRINKLER VALVE
 - ⊕ ELECTRIC GROUND BOX
 - ⊕ FIRE HYDRANT
 - 2"W--- EXIST. 2" WATER LINE
 - 4"W--- EXIST. 4" WATER LINE
 - 8"W--- EXIST. 8" WATER LINE
 - 4"SS--- EXIST. 4" SEWER SERVICE LINE
 - 8"SS--- EXIST. 8" SEWER LINE
 - OE--- EXIST. OVERHEAD ELECTRIC LINE
 - FO--- EXIST. FIBER OPTIC CABLE LINE
 - ATT--- EXIST. AT&T TELEPHONE LINE
 - ATT--- EXIST. CHAIN LANE FENCE
 - ▨ EXIST. ASPHALT PAVING
 - ▨ EXIST. CONCRETE PAVING/SIDEWALK

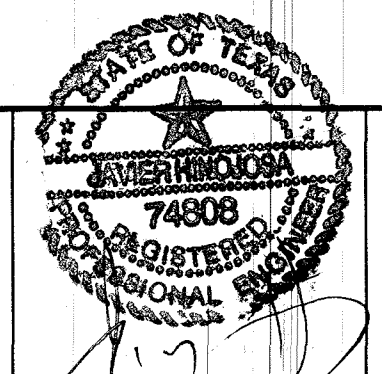
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200502
 PROJECT No. SEPTEMBER, 2020
 DATE: P.GONZALEZ
 DRAWN BY: J.H.
 CHK. BY:



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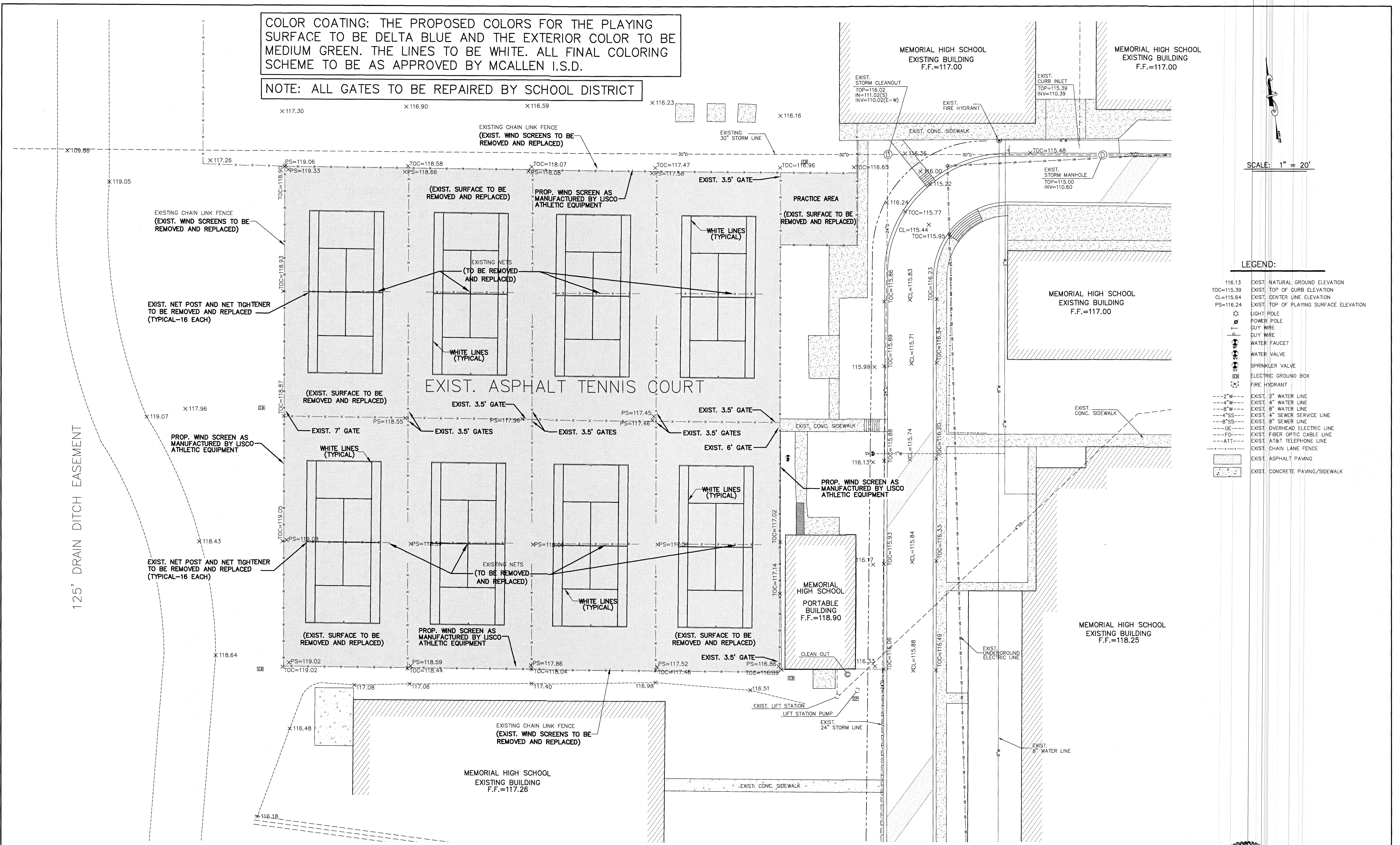
EXISTING PARTIAL SITE, UTILITY AND TOPOGRAPHIC LAYOUT
 McALLEN I.S.D. TENNIS COURT IMPROVEMENTS
 MEMORIAL HIGH SCHOOL-RESURFACING PROJECT
 McALLEN, TEXAS



SHEET 2 OF 4 SHEETS
 200502

COLOR COATING: THE PROPOSED COLORS FOR THE PLAYING SURFACE TO BE DELTA BLUE AND THE EXTERIOR COLOR TO BE MEDIUM GREEN. THE LINES TO BE WHITE. ALL FINAL COLORING SCHEME TO BE AS APPROVED BY MCALLEN I.S.D.

NOTE: ALL GATES TO BE REPAIRED BY SCHOOL DISTRICT



SCALE: 1" = 20'

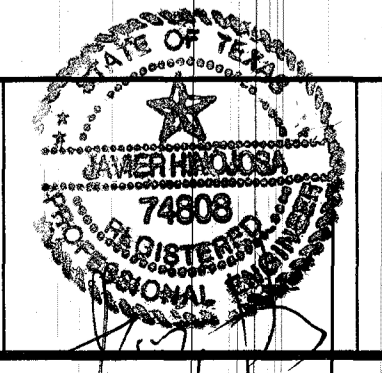
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 - 4"W--- EXIST. 4" WATER LINE
 - 8"W--- EXIST. 8" WATER LINE
 - 4"SS--- EXIST. 4" SEWER SERVICE LINE
 - 8"SS--- EXIST. 8" SEWER LINE
 - OE--- EXIST. OVERHEAD ELECTRIC LINE
 - FO--- EXIST. FIBER OPTIC CABLE LINE
 - ATT--- EXIST. AT&T TELEPHONE LINE
 - CHAIN LINK FENCE
 - EXIST. ASPHALT PAVING
 - EXIST. CONCRETE PAVING/SIDEWALK

DATE:	REVISIONS	200502
		PROJECT No. SEPTEMBER, 2020
		DATE: P.G. & A.G.
		DRAWN BY: J.H.
		CHK. BY:



JAVIER HINOJOSA ENGINEERING
CONSULTING ENGINEERS
416 E. DOVE AVENUE McALLEN, TEXAS 78504
PHONE (956) 668-1588
JavHn@rgv.rr.com
TBPELS FIRM NUMBER F-1295

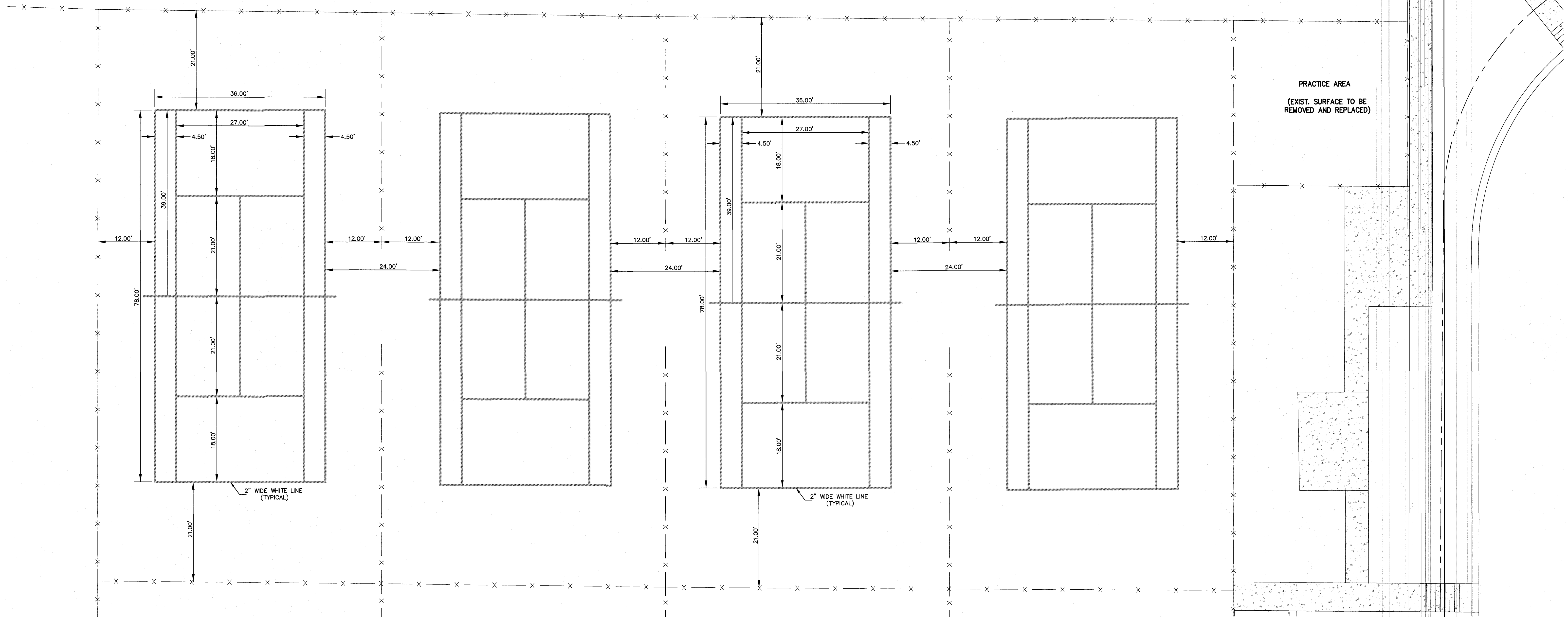
PROPOSED SITE PLAN
McALLEN I.S.D. TENNIS COURT IMPROVEMENTS
MEMORIAL HIGH SCHOOL-RESURFACING PROJECT
McALLEN, TEXAS



SHEET
3
OF 4 SHEETS

MEMORIAL HIGH SCHOOL
EXISTING BUILDING
F.F. = 117.00

SCALE: 1" = 10'

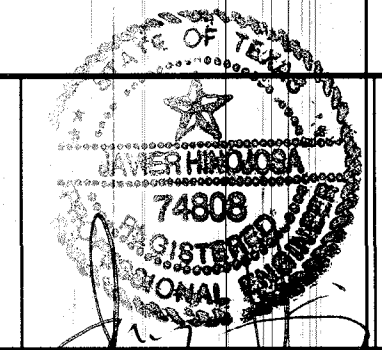


200502	
PROJECT No:	200502
DATE:	SEPTEMBER, 2020
DRAWN BY:	P.G. & A.G.
CHEK. BY:	J.H.



JAVIER HINOJOSA ENGINEERING
CONSULTING ENGINEERS
416 E. DOVE AVENUE McALLEN, TEXAS 78504
PHONE (956) 668-1588
jvhin@ryy.com
TBPELS FIRM NUMBER F-1295

PROPOSED TYPICAL DIMENSION PLAN
McALLEN I.S.D. TENNIS COURT IMPROVEMENTS
MEMORIAL HIGH SCHOOL-RESURFACING PROJECT
McALLEN, TEXAS



SHEET **4**
OF 4 SHEETS

19320

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. Contractors are instructed to acknowledge receipt of all addenda on the "Quote Form", as indicated, and submit with their response.

October 1, 2020

RE: ADDENDUM NO. 1

PROJECT NAME: 2021-064 McAllen ISD Tennis Court Improvements Resurfacing Project - Memorial High School

Clarifications:

ITEM 1 Contractors are advised that there will not be a virtual Proposal Opening, delete the following wording from the General Requirements:

PROJECT NAME: 2021-064 McAllen ISD Tennis Court Improvements Resurfacing Project - Memorial High School

LOCATION: ~~Contractors interested in attending the virtual Proposal Opening shall submit their email address to sandra.zamora@mcallenisd.net no later than 09/15/2020 at 3:00 PM.~~

ITEM 2 Deadline to submit Questions has been extended to October 2, 2020 1:00 p.m.

CSP Documents/Specifications may be obtained online from the **IonWave** website at <https://mcallenisd.ionwave.net/HomePage.aspx> , beginning **September 25, 2020**. **Contractors are responsible for viewing the webpage regularly, or prior to submitting a proposal, to ensure that no addenda or additional information have been issued for the solicitation.**

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. Contractors are instructed to acknowledge receipt of all addenda on the "Quote Form", as indicated, and submit with their response.

October 1, 2020

RE: ADDENDUM NO. 2

PROJECT NAME: 2021-064 McAllen ISD Tennis Court Improvements Resurfacing Project - Memorial High School

Clarifications:

- ITEM 1 Attached is "Quote Form-Revised". Removed all references to Bid Security. (no Bid Security required)

- ITEM 2 Contractors are advised that any reference to "Proposal(s)" shall be interpreted to mean "Request for Cooperative Quotes ("RFCQ)".

CSP Documents/Specifications may be obtained online from the **IonWave** website at <https://mcallenisd.ionwave.net/HomePage.aspx> , beginning **September 25, 2020**. **Contractors are responsible for viewing the webpage regularly, or prior to submitting a quote, to ensure that no addenda or additional information have been issued for the solicitation.**

REQUEST FOR CO-OP QUOTE (RFCQ) - REVISED

TO OWNER:

The undersigned, as bidders, declared that the only person or parties interested in this **RFCQ** as principals are those named herein, that this **RFCQ** is made without collusion with any other person, firm or corporation; that he has carefully examined the form of contract, Notice to Contractors, specifications and the plans thereon referred to, and has carefully examined the locations, and conditions and classes or materials of the proposed work; and agrees that he will provide all the necessary labor, machinery, tools, and apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein and according to the requirements of the Engineer/Architect as therein set forth.

The Bidder shall attach to his **quote** sheet a list of any exceptions to the specifications.

It is understood that the following quantities of work to be done at unit prices are approximately only and are intended principally to serve as a guide in evaluating **quotes**.

It is further agreed that the quantities of work to be done at unit prices and materials to be furnished, may be increased or diminished as may be considered necessary, in the opinion of the Engineer/Architect, to complete the work fully as planned and contemplated, and that all quantities of the work, whether increased or decreased, are to be performed at the unit prices set forth below except as provided for in the specifications.

It is further agreed that lump sum prices may be increased to cover additional work ordered by the Engineer/Architect, but not shown on the plans or required by the specifications, in accordance with the provisions of the General Conditions. Similarly, they may be decreased to cover deletion of work so ordered.

Performance bond and payment bond may be required within the ten (10) days after its award of contract. It is understood that the Owner reserves the right to reject any and all quotes.

QUOTE FORM - REVISED

PROJECT NO.: 2021-064 McAllen ISD Tennis Court Improvements Resurfacing Project - Memorial High School

PLACE: McAllen Independent School District, Purchasing Services, 2000 N. 23rd St., McAllen, Texas 78501

RFCQ DEADLINE DATE: October 8, 2020

SUBMISSION TIME: 3:00:00 PM (Central Time)

Pursuant to and in compliance with the Request for Cooperative Quote and the proposed Contract Solicitation Documents, prepared by McAllen ISD relating to the above referenced project, the undersigned, having become thoroughly familiar with the terms and conditions of the proposed Contract Solicitation Documents and with local conditions affecting the performance and costs of the work at the place where the work is to be completed, and having fully inspected the site in all particulars, hereby proposes and agrees to fully perform the work within the time stated and in strict accordance with the proposed Contract Solicitation Documents, and addenda, thereto, including furnishing of any and all labor and materials for all General Construction and Site Work, for the following sum of money:

CONFIRMATION OF ADDENDUMS: _____ #1 _____ #2 _____ #3 _____ #4 _____ None Received

ENGINEER’S ESTIMATE OF QUANTITIES – APPROXIMATE ONLY:

QUOTE: All labor, materials, services and equipment necessary for completion of the work shown on the drawings and in the specifications. All divisions included, minus alternates.

<u>DESCRIPTION</u>	<u>ITEM QUANTITY</u>	<u>UNIT PRICE</u>	<u>ITEM TOTAL</u>
1. Resurface and Restripe Existing Tennis Courts (Including practice area)	8 EA @	\$ _____	= \$ _____
2. Replace Wind Screens	Lump Sum @	\$ _____	= \$ _____
3. Replace Nets, Net Posts and Net Tightener Mechanisms	8 EA @	\$ _____	= \$ _____
4. Owner Contingency	Stated Amount @	\$ 10,000.00	= \$ 10,000.00
Total Amount of Quote:			\$ _____

Number of calendar days to complete _____.

The undersigned agrees, unless hereinafter stated otherwise to furnish all materials as shown and specified in the Plans and Specifications.

Project Contingency is \$10,000 which shall be added to the proposed Project Cost. Contractor(s) shall include contingency amount(s) in his/her Total Amount of Quote. The District may choose to select any single item or any combination of item(s), to be awarded to a single contractor and/or multiple contractors.

1. If awarded this Contract, the undersigned will execute a satisfactory Construction Contract, Performance Bond(s), Labor and Material Payment Bond(s) and proof of insurance coverage, with the Owner for the entire work as per the Contract Documents within ten (10) days after notice of award. It is agreed that this proposal is subject to the Owner’s acceptance for a period of forty-five (45) days from the date of opening.

2. The district has a critical need for substantial completion by **January 15, 2021**. If the project begins on **November 12, 2020** construction is to be completed within **60** calendar days.

***Specify the number of calendar days that you can substantially complete the project:**
 calendar days.

The undersigned affirms that the information provided herein is true and sufficiently complete so as not to be misleading and has the authority to bind the represented company to a contract.

_____ Company Name	_____ Title of Official	_____ Printed Name of Official	
_____ Phone Number	_____ E-Mail Address	_____ Signature of Official	_____ Date

DRAFT

EXHIBIT B

**Contractor's Services and Fees Pursuant to
Request for Cooperative Quote No. 2021-064**

DRAFT

CORPORATE RESOLUTION

WHEREAS, the Corporation desires to grant signing and authority to certain person(s) described hereunder.

RESOLVED, That the Board of Directors is hereby authorized and approved to grant signing and authority to conduct business to any one of the following person(s): Jack Adams, Vice President of Estimating. The foregoing signing, and authority granted shall include, but shall not be limited to, the execution of Deeds, powers of attorney, transfers, assignments, contracts, obligations, certificates, and other instruments of whatever nature entered by this Corporation.

The undersigned hereby certifies that he/she is the duly elected and qualified Secretary and the custodian of the books and record and seal of Hellas Construction, Inc., a corporation duly formed pursuant to the laws of the state of Texas and that the foregoing is a true record of a resolution duly adopted at a meeting of the Board of Directors and that said meeting was held in accordance with state law and the Bylaws of the above-named Corporation of October 25, 2018, and that said resolution is now in full force and effect without modification or rescission.

IN WITNESS WHEREOF, I have executed my name as Secretary and have hereunto affixed the corporate seal of the above-named Corporation this 25th of October 2018.



Frank Petrini
Secretary



QUOTE FORM - REVISED

PROJECT NO.: 2021-064 McAllen ISD Tennis Court Improvements Resurfacing Project - Memorial High School

PLACE: McAllen Independent School District, Purchasing Services, 2000 N. 23rd St., McAllen, Texas 78501

RFCQ DEADLINE DATE: October 8, 2020

SUBMISSION TIME: 3:00:00 PM (Central Time)

Pursuant to and in compliance with the Request for Cooperative Quote and the proposed Contract Solicitation Documents, prepared by **McAllen ISD** relating to the above referenced project, the undersigned, having become thoroughly familiar with the terms and conditions of the proposed Contract Solicitation Documents and with local conditions affecting the performance and costs of the work at the place where the work is to be completed, and having fully inspected the site in all particulars, hereby proposes and agrees to fully perform the work within the time stated and in strict accordance with the proposed Contract Solicitation Documents, and addenda, thereto, including furnishing of any and all labor and materials for all General Construction and Site Work, for the following sum of money:

CONFIRMATION OF ADDENDUMS: 10.1.20 #1 10.1.20 #2 10.5.20 #3 _____ #4 _____ None Received

ENGINEER'S ESTIMATE OF QUANTITIES – APPROXIMATE ONLY:

QUOTE: All labor, materials, services and equipment necessary for completion of the work shown on the drawings and in the specifications. All divisions included, minus alternates.

<u>DESCRIPTION</u>	<u>ITEM QUANTITY</u>	<u>UNIT PRICE</u>	<u>ITEM TOTAL</u>
1. Resurface and Restripe Existing Tennis Courts (Including practice area)	8 EA @	\$ <u>7,176.87</u>	= \$ <u>57,414.96</u>
2. Replace Wind Screens	1 Lump Sum @	\$ <u>10 per linear ft</u>	= \$ <u>13,160.00</u>
3. Replace Nets, Net Posts and Net Tightener Mechanisms	8 EA @	\$ <u>600.00</u>	= \$ <u>4,800.00</u>
4. Owner Contingency	Stated Amount @	\$ <u>10,000.00</u>	= \$ <u>10,000.00</u>
Total Amount of Quote:			\$ <u>85,374.96</u>

Number of calendar days to complete 30.

The undersigned agrees, unless hereinafter stated otherwise to furnish all materials as shown and specified in the Plans and Specifications.

Project Contingency is \$10,000 which shall be added to the proposed Project Cost. Contractor(s) shall include contingency amount(s) in his/her Total Amount of Quote. The District may choose to select any single item or any combination of item(s), to be awarded to a single contractor and/or multiple contractors.

1. If awarded this Contract, the undersigned will execute a satisfactory Construction Contract, Performance Bond(s), Labor and Material Payment Bond(s) and proof of insurance coverage, with the Owner for the entire work as per the Contract Documents within ten (10) days after notice of award. It is agreed that this proposal is subject to the Owner's acceptance for a period of forty-five (45) days from the date of opening.

2. The district has a critical need for substantial completion by **January 15, 2021**. If the project begins on **November 12, 2020** construction is to be completed within 60 calendar days.

*Specify the number of calendar days that you can substantially complete the project:
30 calendar days.

The undersigned affirms that the information provided herein is true and sufficiently complete so as not to be misleading and has the authority to bind the represented company to a contract.

<u>Hellas Construction, Inc.</u> Company Name	<u>VP of Estimating</u> Title of Official	<u>Jack Adams</u> Printed Name of Official
<u>512-250-2910</u> Phone Number	<u>jadams@hellasconstruction.com</u> E-Mail Address	 Signature of Official
		<u>10.8.2020</u> Date



2021-064 Addendum 3 Hellas Construction, Inc. Supplier Response

Event Information

Number: 2021-064 Addendum 3
Title: McAllen ISD Tennis Court Improvements
Type: Request for Cooperative Quote
Issue Date: 9/25/2020
Deadline: 10/8/2020 03:00 PM (CT)
Notes:

McAllen ISD Tennis Court Improvements Resurfacing Project - Memorial High School

*****In light of the current state and national emergency, McAllen Independent School District has activated Stage 3 Action Plan, which requires District employees to work remotely. Be assured that the District has resumed business as usual. McAllen ISD will be accepting only electronic submittals for the referenced project. Hand delivered and/or mailed proposals will not be accepted. All proposal responses shall be submitted electronically via Ionwave portal.*****

McAllen Independent School District (the "District") is accepting quotes through TIPS Contract #2002051/#2002052 Synthetic or Natural Sports Fields, Courts or Tracks. Quotes are for McAllen ISD Tennis Court Improvements - Resurfacing Project at Memorial High School. Project will be awarded under a single prime contract. Project shall be completed in accordance with engineer specifications within 60 calendar days. All respondents shall be approved contractors through TIPS Contract #2002051/#2002052.

Project Summary: The McAllen Independent School District is proposing to resurface the existing tennis courts at Memorial High School. This work will involve the leveling and patching of the existing tennis courts surface prior to the application of the new surfacing system. A total of eight (8) courts and a practice area are to be resurfaced for this project. Also included in this project is the removal and replacement of all wind screens along the perimeter of the courts, removal and replacement of all court nets, net posts and net tightening mechanisms. The final coloring scheme for the courts shall be decided by the School District

All questions shall be posted on District bidding portal, <https://mcallenisd.ionwave.net/>.

Deadline for posting questions on this project is September 30, 2020 @ 10:00 am CST. **(Extended to October 2, 2020 at 1:00 p.m. CST)**

****To schedule a campus visit, please contact Ruben Trevino, Executive Director for Facility, Maintenance, and Operations or Melissa Ortiz, Facilities Project Manager at the following emails: ruben.trevino@mcallenisd.net & melissa.ortiz@mcallenisd.net.

Consulting Engineer: Javier Hinojosa Engineering; 416 E. Dove Avenue; McAllen, Texas 78504; TBPELS FIRM NO. F-1295

*** **Refer to attached specifications, technical specifications, plans/drawings and "Draft Contract".***

=====
===== The following is contact information for Buyer on this project. All questions shall be submitted on bidding portal (<https://mcallenisd.ionwave.net/>). Buyer: Sandra Zamora, Senior Buyer email: Sandra.zamora@mcallenisd.net

Contact Information

Contact: Sandra Zamora
Address: Purchasing Services
2000 N. 23rd Street
McAllen, TX 78501
Phone: (956) 657 x4480
Email: sandra.zamora@mcallenisd.net

Hellas Construction, Inc. Information

Address: 12710 Research Boulevard
Suite 240
Austin, TX 78759
Phone: (512) 250-2910

By submitting your response, you certify that you are authorized to represent and bind your company.

Alex Luth

Signature

Submitted at 10/8/2020 2:32:20 PM

aluth@hellasconstruction.com

Email

Requested Attachments

Attach Attachment B

W9 2020 Hellas Construction Inc.pdf

Please attach fillable form Attachment B W-9 Form.

Attach Attachment C

Signed CIQ.pdf

Please attach fillable form Attachment C Conflict of Interest Form

Quote Form (Fillable Form)-REVISED

Signed A2 Bid Form.pdf

Please attached Quote Form (Fillable Form)-REVISED

Miscellaneous Documents

Corporate Resolution JA w FP dated 10.25.18.pdf

To be used at Contractors discretion

Bid Lines

1	Resurface and Restripe Existing Tennis Courts (Including practice area)	Quantity: <u>8</u> UOM: <u>EA</u>	Price: <input type="text" value="\$7,176.87"/>	Total: <input type="text" value="\$57,414.96"/>
2	Replace Wind Screens	Quantity: <u>1</u> UOM: <u>Lump Sum</u>	Price: <input type="text" value="\$13,160.00"/>	Total: <input type="text" value="\$13,160.00"/>
3	Replace Nets, Net Posts and Net Tightener Mechanisms	Quantity: <u>8</u> UOM: <u>EA</u>	Price: <input type="text" value="\$600.00"/>	Total: <input type="text" value="\$4,800.00"/>
4	Owner Contingency Include \$10,000	Quantity: <u>1</u> UOM: <u>LS</u>	Price: <input type="text" value="\$10,000.00"/>	Total: <input type="text" value="\$10,000.00"/>

Response Total: \$85,374.96

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Go to www.irs.gov/FormW9 for instructions and the latest information.

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.
Hellas Construction, Inc.

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.
12710 Research Blvd Ste 240

6 City, state, and ZIP code
Austin, Texas

7 List account number(s) here (optional)

Requester's name and address (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									
2	7	-	0	0	7	4	5	3	8

Part II Certification

Under penalties of perjury, I certify that:

- 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
- 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
- I am a U.S. citizen or other U.S. person (defined below); and
- 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 ▶ 8/28/2020
-----------	--	-------------------------

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.

196 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.

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

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.

Hellas Construction, Inc.

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.

Not Applicable

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.

Not Applicable

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

10/08/2020

Date

EXHIBIT C

Contractor's Certificate of Insurance

DRAFT



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/04/2020

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 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 Holmes Murphy & Associates 12712 Park Central Dr., Suite 100 Dallas, TX 75251 Greg Stitts	1-214-363-4433	CONTACT NAME: Ryan Goodwin PHONE (A/C No. Ext): 2147647536 E-MAIL ADDRESS: rgoodwin@holmesmurphy.com	FAX (A/C No.):
INSURED Hellas Construction, Inc. 12710 Research Blvd, Suite 240 Austin, TX 78759		INSURER(S) AFFORDING COVERAGE	
		INSURER A: AMERICAN ZURICH INS CO	NAIC # 40142
		INSURER B: ALLIED WORLD NATL ASSUR CO	10690
		INSURER C: Hudson Excess Insurance Company	14484
		INSURER D: UNDERWRITERS AT LLOYDS	32727
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 58673915

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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			GLO869091400	03/05/20	03/05/21	EACH OCCURRENCE	\$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 2,000,000
							GENERAL AGGREGATE	\$ 4,000,000
							PRODUCTS - COMP/OP AGG	\$ 4,000,000
								\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			BAP871436500	03/05/20	03/05/21	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			03122562	03/05/20	03/05/21	EACH OCCURRENCE	\$ 4,000,000
							AGGREGATE	\$ 4,000,000
								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WC871436400	03/05/20	03/05/21	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTH-ER
	Y/N <input checked="" type="checkbox"/> N		N/A				E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
C	Warranty Coverage			HFF100106-2003	03/01/20	03/01/21	Each Warranty	1,000,000
D	Pollution/Professional			CPP1001120	03/05/20	03/05/21	Claim/Agg	2,000,000

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

*Policy provides coverage for turf manufacturing warranties issued during the policy period for eight years from completion date of the project.

CERTIFICATE HOLDER**CANCELLATION**

Sample Sample Sample, TX 00000 USA	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
	99

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SUPPLEMENT TO CERTIFICATE OF INSURANCE

DATE
03/04/2020

NAME OF INSURED: Hellas Construction, Inc.

Certificate Holder is additional insured on General Liability and Auto Liability if required by written contract. Waiver of subrogation is provided to the Certificate Holder on the General Liability, Auto Liability and Employers Liability if required by written contract. 30 day notice of cancellation is provided to the Certificate Holder on the General Liability, Auto Liability, and Employers Liability policies if required by written contract. General Liability and Auto Liability coverage is primary and non-contributory of other insurance when required by written contract. Umbrella policy is follow form of the General Liability, Auto Liability, Employers Liability and Contractual Liability.

DRAFT

EXHIBIT D
Payment Bond

DRAFT

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: 

SUPERVISOR: 
Arely Benavides (Oct 20, 2020 11:39 CDT)

Approved for presentation to the Board of Education:



202
Superintendent of Schools

APPLICATION AND CERTIFICATE FOR PAYMENT

Wilson Project # 20-099

TO OWNER: McAllen ISD
2000 N 23rd Street
McAllen, TX 78501

PROJECT: Dorothea W. Brown Middle School HVAC
Improvements

APPLICATION NO.: RETAINAGE
PERIOD TO: 9/30/2020
Contract No:
Job Order No.: \$0.00
CONTRACT DATE: 2/24/2020

FROM CONTRACTOR: D. Wilson Construction Company
P.O. Box 3455
McAllen, TX 78502-3455

VIA: Half Associates, Inc.
5000 West Military, Suite 100
McAllen, TX 78503

CONTRACT FOR: General Construction

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. ORIGINAL CONTRACT SUM	\$ 3,185,000.00
2. Net Change by Change Orders	(84,887.00)
3. CONTRACT SUM TO DATE (Line 1 + 2)	3,100,113.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on)	3,100,113.00
5. RETAINAGE:	
a. 0% of Completed Work	\$ —
(Column D + E on Continuation Sheet)	
b. 0% of Stored Material	—
(Column F on Continuation Sheet)	
Total Retainage (Line 5a + 5b or Total in Column I of Continuation Sheet)	—
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)	3,100,113.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	2,945,107.34
8. CURRENT PAYMENT DUE	\$ 155,005.66
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$ —

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ —	\$ —
Total approved this Month	—	(84,887.00)
TOTALS	—	(84,887.00)
NET CHANGES by Change Order	\$ —	\$ (84,887.00)

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

Contractor: D. Wilson Construction Company

By: 

Date: October 9, 2020

State of Texas, County of Hidalgo
Subscribed and sworn to before me this 9th day of October, 2020

Notary Public Norma Irene Espinoza
My Commission expires 08/08/23



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 155,005.66



(Attach explanation if amount certified differs from the amount applied for. Initial figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By:  Date: 10/9/20

This certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

APPROVED FOR PAYMENT

 Oct 9, 2020
Signature Date
 Oct 9, 2020
Signature Date
Signature Date

	Brown Middle School HVAC						Application No.:	RETAINAGE	
Job #	20-099						Application Date:	9/30/2020	
Retainage:	0%						Period From:	9/1/2020	
							To:	9/30/2020	
Item No.	Description Of The Work	Scheduled Value	Work Completed		Stored Materials	Total Amount	Percent Complete	Balance To Finish	Retainage
			Previous	This Period					
General Conditions									
01-010	General Conditions	181,580.00	181,580.00	—	—	181,580.00	100%	—	—
01-011	Mobilization	12,500.00	12,500.00	—	—	12,500.00	100%	—	—
91-870	Bond	39,300.00	39,300.00	—	—	39,300.00	100%	—	—
91-871	Builder's Risk	10,400.00	10,400.00	—	—	10,400.00	100%	—	—
91-874	Llability Insurance	30,500.00	30,500.00	—	—	30,500.00	100%	—	—
91-875	OCP Policy	4,800.00	4,800.00	—	—	4,800.00	100%	—	—
	Sub-total	279,080.00	279,080.00	—	—	279,080.00		—	—
Sitework									
Sitework contractor									
02-100	Sitework contractor	4,500.00	4,500.00	—	—	4,500.00	100%	—	—
02-580	Saw cut concrete paving	1,485.00	1,485.00	—	—	1,485.00	100%	—	—
02-830	Chain link fence	4,990.00	4,990.00	—	—	4,990.00	100%	—	—
02-850	Parking lot striping	500.00	500.00	—	—	500.00	100%	—	—
	Sub-total	11,475.00	11,475.00	—	—	11,475.00		—	—
Concrete									
03-070	Concrete for foundation	5,500.00	5,500.00	—	—	5,500.00	100%	—	—
03-100	Concrete finishing labor	10,825.00	10,825.00	—	—	10,825.00	100%	—	—
03-110	Concrete pump	450.00	450.00	—	—	450.00	100%	—	—
03-200	Reinforcing steel	2,756.00	2,756.00	—	—	2,756.00	100%	—	—
	Sub-total	19,531.00	19,531.00	—	—	19,531.00		—	—
Structural steel									
Structural steel contractor									
05-100	Structural steel contractor	—	—	—	—	—		—	—
	Steel Angle Material	14,607.00	14,607.00	—	—	14,607.00	100%	—	—
	Steel Angle Labor	41,156.00	41,156.00	—	—	41,156.00	100%	—	—
		—	—	—	—	—		—	—
05-505	Railings	1,350.00	1,350.00	—	—	1,350.00	100%	—	—
	Sub-total	57,113.00	57,113.00	—	—	57,113.00		—	—
Carpentry & Millwork									
06-103	Rough Carpentry	5,250.00	5,250.00	204	—	5,250.00	100%	—	—

	Brown Middle School HVAC						Application No.:	RETAINAGE	
Job #	20-099						Application Date:	9/30/2020	
Retainage:	0%						Period From:	9/1/2020	
							To:	9/30/2020	
Item No.	Description Of The Work	Scheduled Value	Work Completed		Stored Materials	Total Amount	Percent Complete	Balance To Finish	Retainage
			Previous	This Period					
	Sub-total	5,250.00	5,250.00	—	—	5,250.00		—	—
	Moisture protection								
07-270	Firestopping	2,000.00	2,000.00	—	—	2,000.00	100%	—	—
07-600	Flashing and sheet metal AHU Curbs	22,850.00	22,850.00	—	—	22,850.00	100%	—	—
07-600	Flashing and sheet metal A/C curbs	2,250.00	2,250.00	—	—	2,250.00	100%	—	—
07-600	Flashing and sheet metal EF curbs	7,300.00	7,300.00	—	—	7,300.00	100%	—	—
07-600	Flashing and sheet metal Patch abandoned	8,900.00	8,900.00	—	—	8,900.00	100%	—	—
07-600	Flashing and sheet metal Return Hoods	6,300.00	6,300.00	—	—	6,300.00	100%	—	—
07-900	Caulking	1,500.00	1,500.00	—	—	1,500.00	100%	—	—
	Sub-total	51,100.00	51,100.00	—	—	51,100.00		—	—
	Finishes								
	Metal studs and drywall								
09-100	Metal studs and drywall	—	—	—	—	—		—	—
	Area M1.02 Remove Existing Ceiling Tile and Re	9,394.00	9,394.00	—	—	9,394.00	100%	—	—
	Area M1.02 Remove and Replace Drywall Ceiling	150.00	150.00	—	—	150.00	100%	—	—
	Area M1.02 Paint in Drywall Ceiling in Restrooms	150.00	150.00	—	—	150.00	100%	—	—
	Area M1.03 Remove Existing Ceiling Tile and Re	11,429.00	11,429.00	—	—	11,429.00	100%	—	—
	Area M1.03 Remove and Replace Drywall Ceiling	525.00	525.00	—	—	525.00	100%	—	—
	Area M1.03 Paint in Drywall Ceiling in Restrooms	525.00	525.00	—	—	525.00	100%	—	—
	Area M1.04 Remove Existing Ceiling Tile and Re	9,641.00	9,641.00	—	—	9,641.00	100%	—	—
	Area M1.04 Remove and Replace Drywall Ceiling	1,050.00	1,050.00	—	—	1,050.00	100%	—	—
	Area M1.04 Paint in Drywall Ceiling in Restrooms	1,050.00	1,050.00	—	—	1,050.00	100%	—	—
	Area M1.05 Remove Existing Ceiling Tile and Re	7,628.00	7,628.00	—	—	7,628.00	100%	—	—
	Area M1.05 Remove and Replace Drywall Ceiling	0.00	—	—	—	—		—	—
	Area M1.05 Paint in Drywall Ceiling in Restrooms	0.00	—	—	—	—		—	—
	Area M1.06 Remove Existing Ceiling Tile and Re	4,995.00	4,995.00	—	—	4,995.00	100%	—	—
	Area M1.06 Remove and Replace Drywall Ceiling	3,407.00	3,407.00	—	—	3,407.00	100%	—	—
	Area M1.06 Paint in Drywall Ceiling in Restrooms	698.00	698.00	—	—	698.00	100%	—	—
	Area M1.07 Remove Existing Ceiling Tile and Re	8,405.00	8,405.00	—	—	8,405.00	100%	—	—
	Area M1.07 Remove and Replace Drywall Ceiling	0.00	—	—	—	—		—	—
	Area M1.07 Paint in Drywall Ceiling in Restrooms	0.00	—	—	—	—		—	—
	Area M1.08 Remove Existing Ceiling Tile and Re	6,059.00	6,059.00	—	—	6,059.00	100%	—	—
	Area M1.08 Remove and Replace Drywall Ceiling	299.50	299.50	—	—	299.50	100%	—	—
	Area M1.08 Paint in Drywall Ceiling in Restrooms	299.50	299.50	—	—	299.50	100%	—	—
	Area M1.09 Remove Existing Ceiling Tile and Re	2,563.00	2,563.00	—	—	2,563.00	100%	—	—

	Brown Middle School HVAC							Application No.:	RETAINAGE
Job #	20-099							Application Date:	9/30/2020
Retainage:	0%							Period From:	9/1/2020
								To:	9/30/2020
Item No.	Description Of The Work	Scheduled Value	Work Completed		Stored Materials	Total Amount	Percent Complete	Balance To Finish	Retainage
			Previous	This Period					
	Area M1.09 Remove and Replace Drywall Ceiling	0.00	—	—	—	—	—	—	—
	Area M1.09 Paint in Drywall Ceiling in Restrooms	0.00	—	—	—	—	—	—	—
	Area M1.10 Remove Existing Ceiling Tile and Re	2,364.00	2,364.00	—	—	2,364.00	100%	—	—
	Area M1.10 Remove and Replace Drywall Ceiling	184.00	184.00	—	—	184.00	100%	—	—
	Area M1.10 Paint in Drywall Ceiling in Restrooms	184.00	184.00	—	—	184.00	100%	—	—
			—	—	—	—	—	—	—
09-102	Drywall Patchwork	4,000.00	4,000.00	—	—	4,000.00	100%	—	—
09-605	Floor protection	3,000.00	3,000.00	—	—	3,000.00	100%	—	—
09-900	Painting and VWC	9,750.00	9,750.00	—	—	9,750.00	100%	—	—
	Sub-total	87,750.00	87,750.00	—	—	87,750.00		—	—
	MEP								
	HVAC								
15-500	HVAC	—	—	—	—	—	—	—	—
15-991	Mech system testing	24,250.00	24,250.00	—	—	24,250.00	100%	—	—
15-992	Duct pressure testing	5,600.00	5,600.00	—	—	5,600.00	100%	—	—
		—	—	—	—	—	—	—	—
	Permit, Submittals, Bond, insurance	54,736	54,736.00	—	—	54,736.00	100%	—	—
	Mobilization	8,000	8,000.00	—	—	8,000.00	100%	—	—
	Demolition of Mech. Unit total 92	53,326	53,326.00	—	—	53,326.00	100%	—	—
	Air Cooled Chillers Materials - 3	199,524	199,524.00	—	—	199,524.00	100%	—	—
	Air Cooled Chillers Labor - 3	4,220	4,220.00	—	—	4,220.00	100%	—	—
	Rooftop CHW Air Handlers Materials - 19	292,718	292,718.00	—	—	292,718.00	100%	—	—
	Rooftop CHW Air Handlers Labor - 19	35,113	35,113.00	—	—	35,113.00	100%	—	—
	DX Rooftop Units Materials - 2	20,250	20,250.00	—	—	20,250.00	100%	—	—
	DX Rooftop Units Labor - 2	4,220	4,220.00	—	—	4,220.00	100%	—	—
	Rooftop Unit Curbs Materials - 21	47,750	47,750.00	—	—	47,750.00	100%	—	—
	Rooftop Unit Curbs Labor - 21	32,524	32,524.00	—	—	32,524.00	100%	—	—
	VFD - (Mat. Labor in Elec) - 3	11,500	11,500.00	—	—	11,500.00	100%	—	—
	Grille/Diffuser/Register - (Labor in Duct)	11,240	11,240.00	—	—	11,240.00	100%	—	—
	Dampers - 16	1,534	1,534.00	—	—	1,534.00	100%	—	—
	EF/Intake & Relief Hoods Mat - 22	18,382	18,382.00	—	—	18,382.00	100%	—	—
	EF/Intake & Relief Hoods Labor - 22	8,050	8,050.00	—	—	8,050.00	100%	—	—
	Single Duct Terminal Units - 72	39,122	39,122.00	—	—	39,122.00	100%	—	—
	Pumps & Pump Accessories Materials - 3	16,681	16,681.00	—	—	16,681.00	100%	—	—
	Pumps & Pump Accessories Labor - 3	3,220	3,220.00	—	—	3,220.00	100%	—	—
			—	206	—	—	—	—	—

	Brown Middle School HVAC						Application No.:	RETAINAGE	
Job #	20-099						Application Date:	9/30/2020	
Retainage:	0%						Period From:	9/1/2020	
							To:	9/30/2020	
Item No.	Description Of The Work	Scheduled Value	Work Completed		Stored Materials	Total Amount	Percent Complete	Balance To Finish	Retainage
			Previous	This Period					
	Sheetmetal Ductwork: Fabrication labor		—	—	—	—		—	
	M1.02-Sheetmetal Ductwork: Fabrication labor	9,841	9,841.00	—	—	9,841.00	100%	—	—
	M1.02-Sheetmetal Ductwork: Installation Labor	16,456	16,456.00	—	—	16,456.00	100%	—	—
	M1.02-Sheetmetal Ductwork: Materials	7,202	7,202.00	—	—	7,202.00	100%	—	—
	M1.03-Sheetmetal Ductwork: Fabrication labor	8,375	8,375.00	—	—	8,375.00	100%	—	—
	M1.03-Sheetmetal Ductwork: Installation Labor	14,023	14,023.00	—	—	14,023.00	100%	—	—
	M1.03-Sheetmetal Ductwork: Materials	6,184	6,184.00	—	—	6,184.00	100%	—	—
	M1.04-Sheetmetal Ductwork: Fabrication labor	14,718	14,718.00	—	—	14,718.00	100%	—	—
	M1.04-Sheetmetal Ductwork: Installation Labor	24,954	24,954.00	—	—	24,954.00	100%	—	—
	M1.04-Sheetmetal Ductwork: Materials	10,773	10,773.00	—	—	10,773.00	100%	—	—
	M1.05-Sheetmetal Ductwork: Fabrication labor	11,900	11,900.00	—	—	11,900.00	100%	—	—
	M1.05-Sheetmetal Ductwork: Installation Labor	20,095	20,095.00	—	—	20,095.00	100%	—	—
	M1.05-Sheetmetal Ductwork: Materials	8,731	8,731.00	—	—	8,731.00	100%	—	—
	M1.06-Sheetmetal Ductwork: Fabrication labor	7,674	7,674.00	—	—	7,674.00	100%	—	—
	M1.06-Sheetmetal Ductwork: Installation Labor	12,810	12,810.00	—	—	12,810.00	100%	—	—
	M1.06-Sheetmetal Ductwork: Materials	5,672	5,672.00	—	—	5,672.00	100%	—	—
	M1.08-Sheetmetal Ductwork: Fabrication labor	14,016	14,016.00	—	—	14,016.00	100%	—	—
	M1.08-Sheetmetal Ductwork: Installation Labor	23,741	23,741.00	—	—	23,741.00	100%	—	—
	M1.08-Sheetmetal Ductwork: Materials	10,261	10,261.00	—	—	10,261.00	100%	—	—
	M1.09-Sheetmetal Ductwork: Fabrication labor	4,856	4,856.00	—	—	4,856.00	100%	—	—
	M1.09-Sheetmetal Ductwork: Installation Labor	7,951	7,951.00	—	—	7,951.00	100%	—	—
	M1.09-Sheetmetal Ductwork: Materials	3,631	3,631.00	—	—	3,631.00	100%	—	—
	M1.10-Sheetmetal Ductwork: Fabrication labor	4,155	4,155.00	—	—	4,155.00	100%	—	—
	M1.10-Sheetmetal Ductwork: Installation Labor	6,738	6,738.00	—	—	6,738.00	100%	—	—
	M1.10-Sheetmetal Ductwork: Materials	3,117	3,117.00	—	—	3,117.00	100%	—	—
		0	—	—	—	—		—	
	Ductwork Insulation	0	—	—	—	—		—	
	M1.02-Ductwork Insulation:	9,176	9,176.00	—	—	9,176.00	100%	—	—
	M1.03-Ductwork Insulation:	7,106	7,106.00	—	—	7,106.00	100%	—	—
	M1.04-Ductwork Insulation:	12,725	12,725.00	—	—	12,725.00	100%	—	—
	M1.05-Ductwork Insulation:	9,791	9,791.00	—	—	9,791.00	100%	—	—
	M1.06-Ductwork Insulation:	5,078	5,078.00	—	—	5,078.00	100%	—	—
	M1.07-Ductwork Insulation:	2,540	2,540.00	—	—	2,540.00	100%	—	—
	M1.08-Ductwork Insulation:	6,266	6,266.00	—	—	6,266.00	100%	—	—
	M1.09-Ductwork Insulation:	4,312	4,312.00	—	—	4,312.00	100%	—	—
	M1.10-Ductwork Insulation:	3,600	3,600.00	—	—	3,600.00	100%	—	—
			—	207	—	—		—	

	Brown Middle School HVAC						Application No.:	RETAINAGE	
Job #	20-099						Application Date:	9/30/2020	
Retainage:	0%						Period From:	9/1/2020	
							To:	9/30/2020	
Item No.	Description Of The Work	Scheduled Value	Work Completed		Stored Materials	Total Amount	Percent Complete	Balance To Finish	Retainage
			Previous	This Period					
	Pump Room Piping Insulation: Materials	5,658	5,658.00	—	—	5,658.00	100%	—	—
	Pump Room Piping insulation: Labor	6,877	6,877.00	—	—	6,877.00	100%	—	—
	Equipment insulation: Materials	5,175	5,175.00	—	—	5,175.00	100%	—	—
	Equipment insulation: Labor	5,152	5,152.00	—	—	5,152.00	100%	—	—
	Condensate Piping Insulation: Materials	1,978	1,978.00	—	—	1,978.00	100%	—	—
	Condensate Piping Insulation: Labor	3,991	3,991.00	—	—	3,991.00	100%	—	—
	Piping Exterior Insulation: Materials	36,822	36,822.00	—	—	36,822.00	100%	—	—
	Piping Exterior Insulation: Labor	50,197	50,197.00	—	—	50,197.00	100%	—	—
	Trenching/Backfill/Compaction	6,175	6,175.00	—	—	6,175.00	100%	—	—
	Hydronic Piping Underground: Materials	11,975	11,975.00	—	—	11,975.00	100%	—	—
	Hydronic Piping Underground: Labor	12,235	12,235.00	—	—	12,235.00	100%	—	—
	Hydronic Piping Supports: Materials	69,020	69,020.00	—	—	69,020.00	100%	—	—
	Hydronic Piping Supports: Labor	13,880	13,880.00	—	—	13,880.00	100%	—	—
	Hydronic Piping Above Ground: Materials	206,167	206,167.00	—	—	206,167.00	100%	—	—
	Hydronic Piping Above Ground: Labor	184,924	184,924.00	—	—	184,924.00	100%	—	—
	CHW Chemical Treatment: Materials	5,175	5,175.00	—	—	5,175.00	100%	—	—
	CHW Chemical Treatment: Labor	2,116	2,116.00	—	—	2,116.00	100%	—	—
	Ductwork Cleaning: Materials	1,434	1,434.00	—	—	1,434.00	100%	—	—
	Ductwork Cleaning: Equipment	11,901	11,901.00	—	—	11,901.00	100%	—	—
	Ductwork Cleaning: Travel	7,936	7,936.00	—	—	7,936.00	100%	—	—
	Ductwork Cleaning: Labor	42,525	42,525.00	—	—	42,525.00	100%	—	—
	DDC: Engineering	18,621	18,621.00	—	—	18,621.00	100%	—	—
	DDC: Equipment	93,107	93,107.00	—	—	93,107.00	100%	—	—
	DDC: Installation (Labor & Materials)	148,971	148,971.00	—	—	148,971.00	100%	—	—
	DDC: Programming	27,932	27,932.00	—	—	27,932.00	100%	—	—
	DDC: Graphics/Software	27,932	27,932.00	—	—	27,932.00	100%	—	—
	DDC: Start Up/Commissioning	55,864	55,864.00	—	—	55,864.00	100%	—	—
	DDC: Training	460	460.00	—	—	460.00	100%	—	—
	DDC: O&M	863	863.00	—	—	863.00	100%	—	—
	Hoisting & Rentals	35,909	35,909.00	—	—	35,909.00	100%	—	—
	Start up & Commissioning Labor	8,050	8,050.00	—	—	8,050.00	100%	—	—
		—	—	—	—	—	—	—	—
	Electrical	—	—	—	—	—	—	—	—
16-000	Mobilization	13,250.00	13,250.00	—	—	13,250.00	100%	—	—
16-103	Gear - Material	39,100.00	39,100.00	—	—	39,100.00	100%	—	—
16-104	Gear - Labor	12,450.00	12,450.00	208	—	12,450.00	100%	—	—

	Brown Middle School HVAC						Application No.:	RETAINAGE	
Job #	20-099						Application Date:	9/30/2020	
Retainage:	0%						Period From:	9/1/2020	
							To:	9/30/2020	
Item No.	Description Of The Work	Scheduled Value	Work Completed		Stored Materials	Total Amount	Percent Complete	Balance To Finish	Retainage
			Previous	This Period					
16-114	Study	2,789.00	2,789.00	—	—	2,789.00	100%	—	—
16-107	Rough In - Material	31,688.00	31,688.00	—	—	31,688.00	100%	—	—
16-108	Rough In - Labor	59,491.00	59,491.00	—	—	59,491.00	100%	—	—
16-109	Wire - Material	13,449.00	13,449.00	—	—	13,449.00	100%	—	—
16-110	Wire - Labor	22,652.00	22,652.00	—	—	22,652.00	100%	—	—
16-101	Fixtures - Material	900.00	900.00	—	—	900.00	100%	—	—
16-102	Fixtures - Labor	565.00	565.00	—	—	565.00	100%	—	—
16-105	Equipment	3,589.00	3,589.00	—	—	3,589.00	100%	—	—
16-106	Demo	13,878.00	13,878.00	—	—	13,878.00	100%	—	—
16-113	Special Systems	33,450.00	33,450.00	—	—	33,450.00	100%	—	—
	Sub-total	2,566,701.00	2,566,701.00	—	—	2,566,701.00		—	—
	Betterment fund								
BF001	Betterment Fund	100,000.00	15,113.00	—	—	15,113.00	15%	84,887.00	—
	CR-02-RFI 11-Add ne exh fans	(1,955.00)	(1,955.00)	—	—	(1,955.00)	100%	—	—
	CR-03-RFI 07-Cost to Add Barometric Dampers	(4,626.00)	(4,626.00)	—	—	(4,626.00)	100%	—	—
	CR 05 RFI 31 Rev1-Return Air Grill at Principal	(1,184.00)	(1,184.00)	—	—	(1,184.00)	100%	—	—
	CR 06- Rev1-Remove and Replace 15 Diffusers	(2,307.00)	(2,307.00)	—	—	(2,307.00)	100%	—	—
	CR 08 REV 01-Add 5 Balancing Dampers for T&	(1,041.00)	(1,041.00)	—	—	(1,041.00)	100%	—	—
	CR 07-Struct Stl -- Partial - Draw of CR 07 --req	(4,000.00)	(4,000.00)	—	—	(4,000.00)	100%	—	—
		—	—	—	—	—		—	—
CR-02-AEA-01	CR 02 RFI 11-Add ne exh fans	1,955.00	1,955.00	—	—	1,955.00	100%	—	—
CR-03-AEA-02	CR 03 RFI 07-Cost to Add Barometric Dampers	4,626.00	4,626.00	—	—	4,626.00	100%	—	—
CR-05-AEA-03	CR 05 RFI 31 Rev1-Return Air Grill at Principal	1,184.00	1,184.00	—	—	1,184.00	100%	—	—
CR-06-AEA-04	CR 06- Rev1-Remove and Replace 15 Diffusers	2,307.00	2,307.00	—	—	2,307.00	100%	—	—
CR 08	CR 08 REV 01-Add 5 Balancing Dampers for T&	1,041.00	1,041.00	—	—	1,041.00	100%	—	—
CR 07	CR 07-Struct Stl -- Partial - Draw of CR 07 --req	4,000.00	4,000.00	—	—	4,000.00	100%	—	—
		—	—	—	—	—		—	—
BF002	2 Ton Steel Allowance	7,000.00	7,000.00	—	—	7,000.00	100%	—	—
	CR 07-Struct Stl req. to Support 13 Exhaust Fan	(7,000.00)	(7,000.00)	—	—	(7,000.00)	100%	—	—
		—	—	—	—	—		—	—
CR 07	CR 07-Struct Stl -- Partial - Draw of CR 07 --to S	7,000.00	7,000.00	—	—	7,000.00	100%	—	—
	Total Amount of CR 07 \$11,000.00	—	—	—	—	—		—	—
		—	—	—	—	—		—	—
	Sub-total	107,000.00	22,113.00	—	—	22,113.00		84,887.00	—

	Brown Middle School HVAC							Application No.:	RETAINAGE
Job #	20-099							Application Date:	9/30/2020
Retainage:	0%							Period From:	9/1/2020
								To:	9/30/2020
Item No.	Description Of The Work	Scheduled Value	Work Completed		Stored Materials	Total Amount	Percent Complete	Balance To Finish	Retainage
			Previous	This Period					
	Change Orders								
	Change Orders # 001	(84,887.00)	—	—	—	—		(84,887.00)	
	Sub-total	(84,887.00)	—	—	—	—		(84,887.00)	—
	Contract sum	3,100,113.00	3,100,113.00	—	—	3,100,113.00	100%	—	—



FINAL PAYMENT CHECKLIST
Facilities Projects

Project Name: Competitive Sealed Proposal No. 2020-209 Dorothea W. Brown Middle School HVAC Improvements

1. Vendor Obligations to McAllen ISD:

YES	NA	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Original Certificate of Substantial Completion (internal/external) transmitted to McAllen ISD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Letter of Guarantee, Warranty transmitted to McAllen ISD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	List of names and addresses of obligatory vendors (subcontractors/suppliers) transmitted to McAllen ISD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	All non-compliant items corrected (incl. punch list) and evidence of corrections transmitted to McAllen ISD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Final copy of Close-Out and As-Built Documents transmitted to McAllen ISD (hard copy and electronic files) and/or final inspections performed and project specifications met

Notes:

McAllen ISD Facilities, Maintenance and Operations staff certifies that the items indicated above have been completed by the vendor.

2. McAllen ISD Facilities, Maintenance, and Operations Obligations to McAllen ISD Business Operations

Select one:	
<input type="checkbox"/>	Item has been recorded as an asset and assigned an asset number.
<input checked="" type="checkbox"/>	Item has not been recorded as an asset. Appropriate steps are being taken to record. Approved to proceed with final payment.
<input type="checkbox"/>	Not applicable.

McAllen ISD Business Operations staff certifies that the project indicated above has been reviewed.

APPROVED BY: 

For further information, contact:
Name: Ruben Trevino
Phone: (956) 632-3200
Email: ruben.trevino@mcallenisd.net

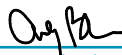
ACKNOWLEDGED BY: 

For further information, contact:
Name: Iris Luna
Phone: (956) 632-8403
Email: irs.luna@mcallenisd.net

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: 

SUPERVISOR: 
Arely Benavides (Oct 20, 2020 17:43 CDT)

Approved for presentation to the Board of Education:



212 _____
Superintendent of Schools

AIA Document G702™ - 1992

APPROVED FOR PAYMENT

M. O. S. Oct 20, 2020

Signature Date
[Signature] Oct 20, 2020

Signature Date

Application and Certificate for Payment

TO OWNER:

McAllen Independent School District
4309 Warrior Ave., Bldg. B
McAllen, TX 78501

FROM CONTRACTOR:

American Contracting USA, Inc.
1606 S. Reynolds
Rio Hondo, TX 78583

PROJECT:

CSP #2018-229 Achieve Early College Re-Roof & HVAC Upgrades

VIA ARCHITECT:

Chanin Engineering, LLC
400 Nolana Ave., Suite H2
McAllen, TX 78504

APPLICATION NO: FINAL-REV.

PERIOD TO: 10/20/2020

CONTRACT FOR:

CONTRACT DATE:

PROJECT NOS: / /

Distribution to:

OWNER

ARCHITECT

CONTRACTOR

FIELD

OTHER

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. AIA Document G703™, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM	\$	<u>2,263,000.00</u>
2. NET CHANGE BY CHANGE ORDERS	\$	<u>-47,496.48</u>
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$	<u>2,215,503.52</u>
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	<u>2,215,503.52</u>
5. RETAINAGE:		
a. 0 % of Completed Work (Columns D + E on G703)	\$	<u>0.00</u>
b. 0 % of Stored Material (Column F on G703)	\$	<u>0.00</u>
Total Retainage (Lines 5a + 5b, or Total in Column I of G703)	\$	<u>0.00</u>
6. TOTAL EARNED LESS RETAINAGE	\$	<u>2,215,503.52</u>
(Line 4 minus Line 5 Total)		
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$	<u>1,918,879.35</u>
(Line 6 from prior Certificate)		
8. CURRENT PAYMENT DUE	\$	<u>296,624.17</u>
9. BALANCE TO FINISH, INCLUDING RETAINAGE	\$	<u>0.00</u>
(Line 3 minus Line 6)		

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$	\$
Total approved this month	\$ <u>-47,496.48</u>	\$
TOTAL	\$ <u>-47,496.48</u>	\$
NET CHANGES by Change Order	\$	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: American Contracting USA, Inc.

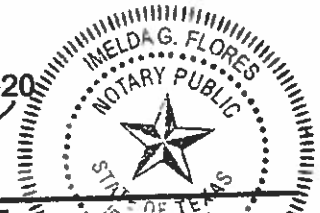
By: [Signature]
State of: Texas

Date: October 20, 2020

County of: Cameron

Subscribed and sworn to before me this 20th day of October 2020

Notary Public: [Signature]
My commission expires: April 19, 2021



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 296,624.17

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: [Signature]
By: _____

Date: 10-20-20

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

AIA Document G702™ - 1992. Copyright © 1953, 1963, 1965, 1971, 1978, 1983 and 1992 by The American Institute of Architects. All rights reserved. WARNING: This AIA Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org

CSP No. 2018-229
McAllen ISD Achieve Early College Re-Roof & HVAC Upgrades
Schedule of Values

AIA DOCUMENT G703

(INSTRUCTIONS ON REVERSE SIDE Page 2 of 2 pages)

CONTINUATION SHEET

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.
In tabulations below, amounts are stated to the nearest dollar
Use Column I on contracts where variable retainage for line items may apply.

APPLICATION NUMBER: FINAL
APPLICATION DATE:
PERIOD TO / FROM:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUES	D WORK COMPLETED FROM PREVIOUS (D+E)	E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED (D+E+F)	(G/C)	H BALANCE TO FINISH (C-G)	I RETAINAGE 0%
1	Overhead & Profit	\$323,070.00	\$290,783.00	\$32,307.00	\$0.00	\$323,070.00	100%	\$0.00	\$0.00
2	Storage Container	\$3,000.00	\$2,700.00	\$300.00	\$0.00	\$3,000.00	100%	\$0.00	\$0.00
3	Portable	\$2,000.00	\$1,800.00	\$200.00	\$0.00	\$2,000.00	100%	\$0.00	\$0.00
4	Equipment	\$35,000.00	\$31,500.00	\$3,500.00	\$0.00	\$35,000.00	100%	\$0.00	\$0.00
5	Bonds	\$20,000.00	\$20,000.00	\$0.00	\$0.00	\$20,000.00	100%	\$0.00	\$0.00
6	Insurances	\$12,000.00	\$12,000.00	\$0.00	\$0.00	\$12,000.00	100%	\$0.00	\$0.00
7	Mobilization	\$3,000.00	\$3,000.00	\$0.00	\$0.00	\$3,000.00	100%	\$0.00	\$0.00
8	Demolition	\$47,000.00	\$47,000.00	\$0.00	\$0.00	\$47,000.00	100%	\$0.00	\$0.00
9	Dumpsters	\$40,000.00	\$39,600.00	\$400.00	\$0.00	\$40,000.00	100%	\$0.00	\$0.00
10	Roofing Materials	\$448,000.00	\$412,180.00	\$35,840.00	\$0.00	\$448,000.00	100%	\$0.00	\$0.00
11	Roofing Labor	\$47,000.00	\$44,650.00	\$2,350.00	\$0.00	\$47,000.00	100%	\$0.00	\$0.00
12	Insulation Materials	\$333,000.00	\$333,000.00	\$0.00	\$0.00	\$333,000.00	100%	\$0.00	\$0.00
13	Insulation Labor	\$47,000.00	\$47,000.00	\$0.00	\$0.00	\$47,000.00	100%	\$0.00	\$0.00
14	Sheet Metal: Material	\$40,000.00	\$40,000.00	\$0.00	\$0.00	\$40,000.00	100%	\$0.00	\$0.00
15	Sheet Metal: Labor	\$50,000.00	\$42,500.00	\$7,500.00	\$0.00	\$50,000.00	100%	\$0.00	\$0.00
16	Warranty	\$15,930.00	\$0.00	\$15,930.00	\$0.00	\$15,930.00	100%	\$0.00	\$0.00
17	Demobilization	\$3,000.00	\$0.00	\$3,000.00	\$0.00	\$3,000.00	100%	\$0.00	\$0.00
18	Carpentry Materials	\$10,000.00	\$10,000.00	\$0.00	\$0.00	\$10,000.00	100%	\$0.00	\$0.00
19	Carpentry Labor	\$20,000.00	\$20,000.00	\$0.00	\$0.00	\$20,000.00	100%	\$0.00	\$0.00
20	Ladders	\$3,000.00	\$0.00	\$3,000.00	\$0.00	\$3,000.00	100%	\$0.00	\$0.00
21	Roof Hatches	\$10,000.00	\$0.00	\$10,000.00	\$0.00	\$10,000.00	100%	\$0.00	\$0.00
22	Wall Panels	\$26,000.00	\$20,800.00	\$5,200.00	\$0.00	\$26,000.00	100%	\$0.00	\$0.00
23	HVAC - Equipment	\$296,000.00	\$296,000.00	\$0.00	\$0.00	\$296,000.00	100%	\$0.00	\$0.00
24	HVAC - Labor	\$180,000.00	\$153,000.00	\$27,000.00	\$0.00	\$180,000.00	100%	\$0.00	\$0.00
25	HVAC - Materials	\$30,000.00	\$30,000.00	\$0.00	\$0.00	\$30,000.00	100%	\$0.00	\$0.00
26	HVAC - Electrical	\$108,000.00	\$86,400.00	\$21,600.00	\$0.00	\$108,000.00	100%	\$0.00	\$0.00
27	HVAC - Controls	\$26,000.00	\$26,000.00	\$0.00	\$0.00	\$26,000.00	100%	\$0.00	\$0.00
28	HVAC - Crane	\$10,000.00	\$10,000.00	\$0.00	\$0.00	\$10,000.00	100%	\$0.00	\$0.00
29	Contingency Allowance	\$75,000.00	\$0.00	\$28,503.52	\$0.00	\$28,503.52	38%	\$46,496.48	\$0.00
30	Unused Contingency Allowance	-\$46,496.48	\$0.00	\$0.00	\$0.00	\$0.00	0%	-\$46,496.48	\$0.00
31	CO Proposal #03	-\$1,000.00	\$0.00	214 -\$1,000.00	\$0.00	-\$1,000.00	100%	\$0.00	\$0.00
	Total for Roof Replacement:	\$2,215,503.52	\$2,019,873.00	\$196,630.52	\$0.00	\$2,215,503.52	100%	\$0.00	\$0.00



FINAL PAYMENT CHECKLIST
Facilities Projects

Project Name: Competitive Sealed Proposal No. 2018-229 Achieve Early College Re-Roof and HVAC Upgrades

1. Vendor Obligations to McAllen ISD:

YES	NA	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Original Certificate of Substantial Completion (internal/external) transmitted to McAllen ISD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Letter of Guarantee, Warranty transmitted to McAllen ISD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	List of names and addresses of obligatory vendors (subcontractors/suppliers) transmitted to McAllen ISD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	All non-compliant items corrected (incl. punch list) and evidence of corrections transmitted to McAllen ISD
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Final copy of Close-Out and As-Built Documents transmitted to McAllen ISD (hard copy and electronic files) and/or final inspections performed and project specifications met

Notes:

McAllen ISD Facilities, Maintenance and Operations staff certifies that the items indicated above have been completed by the vendor.

2. McAllen ISD Facilities, Maintenance, and Operations Obligations to McAllen ISD Business Operations

Select one:	
<input type="checkbox"/>	Item has been recorded as an asset and assigned an asset number.
<input checked="" type="checkbox"/>	Item has not been recorded as an asset. Appropriate steps are being taken to record. Approved to proceed with final payment.
<input type="checkbox"/>	Not applicable.

McAllen ISD Business Operations staff certifies that the project indicated above has been reviewed.

APPROVED BY: 

For further information, contact:
Name: Ruben Trevino
Phone: (956) 632-3200
Email: ruben.trevino@mcallenisd.net

ACKNOWLEDGED BY: 

For further information, contact:
Name: Iris Luna
Phone: (956) 632-8403
Email: iris.luna@mcallenisd.net

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: *Alejandra Gonzalez (Purchasing)*
Alejandra Gonzalez (Purchasing) (Oct 19, 2020 15:55 CDT)

SUPERVISOR: *Cynthia Medrano-Richards*

Approved for presentation to the Board of Education:

J. X. Gonzalez

216 _____
Superintendent of Schools



MASTER INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

This Master Intergovernmental Cooperative Purchasing Agreement (the “**Agreement**”) is entered into by and between those certain government agencies that execute a Management Services Agreement (“**Lead Agencies**”) with Equalis Group LLC (“**Equalis Group**”) to be appended and made a part hereof and such other public agencies, non-profit organizations, and businesses (each a “**Purchasing Group Member**”) who register to participate in the cooperative purchasing programs administered by Equalis Group and its affiliates and subsidiaries (collectively, “**Equalis Group Purchasing Program**”) by either registering on an Equalis Group Purchasing Program website (such as www.equalisgroup.org) or by executing a copy of this Agreement.

RECITALS

WHEREAS, after a competitive solicitation and selection process conducted by Lead Agencies, Lead Agencies enter into master agreements (“**Master Agreements**”) with awarded suppliers to provide a variety of goods, products, and services (“**Products**”) to the applicable Lead Agency and Purchasing Group Members;

WHEREAS, Master Agreements are made available to Purchasing Group Members by Lead Agencies through the Equalis Group Purchasing Program and provide that Purchasing Group Members may voluntarily purchase Products on the same terms, conditions, and pricing as the Lead Agency, subject to any applicable federal and/or local purchasing ordinances and the laws of the State of purchase; and

WHEREAS, in addition to Master Agreements, the Equalis Group Purchasing Program may from time to time offer Purchasing Group Members the opportunity to acquire Products through other group purchasing agreements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and of the mutual benefits to result, the parties hereto agree as follows:

1. Each party will facilitate the cooperative procurement of Products.
2. The procurement of Products by Purchasing Group Member party to this Agreement shall be conducted in accordance with and subject to the relevant federal, state, and local statutes, ordinances, rules, and regulations that govern Purchasing Group Member’s procurement practices.
3. The cooperative use of Master Agreements and other group purchasing agreements shall be conducted in accordance with the terms and conditions of such agreements, except as modification of those terms and conditions is otherwise allowed or required by applicable federal, state, or local law.
4. The Lead Agencies will make available, upon reasonable request and subject to convenience, information about Master Agreements which may assist in facilitating and improving the procurement of Products by the Purchasing Group Member.
5. Purchasing Group Member agrees that Equalis Group Purchasing Program may provide access to group purchasing organization (“**GPO**”) agreements directly or indirectly by enrolling Purchasing Group Member in another GPO’s purchasing program; provided that the purchase of Products shall be at Purchasing Group Member’s sole discretion.
6. Purchasing Group Member will make timely payments to the distributor, manufacturer, or other vendor (each a “**Supplier**”) for Products procured and received through any Master Agreement or GPO group purchasing agreement (each an “**Equalis Agreement**”) in accordance with the terms and conditions of this Agreement and of the Equalis Agreement, as applicable.

7. Payment for Products and inspections and acceptance of Products ordered by Purchasing Group Member shall be the exclusive obligation of Purchasing Group Member. Disputes between Purchasing Group Member and any Supplier shall be resolved in accordance with the law and venue rules of the State of purchase unless otherwise agreed to by Purchasing Group Member and the Supplier. The exercise of any rights or remedies by Purchasing Group Member shall be the exclusive obligation of Purchasing Group Member.
8. Purchasing Group Member shall not use this Agreement or the terms and conditions of any Equalis Agreement as a method for obtaining additional concessions or reduced prices for similar products or services.
9. Purchasing Group Member shall be responsible for the ordering of Products under this Agreement. A non-procuring party shall not be liable in any fashion for any violation by a party procuring Products under this Agreement. To the extent permitted by law, the party procuring Products shall hold any non-procuring party harmless from any liability that may arise from action or inaction of the party procuring Products. Without limiting the generality of the foregoing, Equalis Group Purchasing Program makes no representations or warranties regarding any Product or Equalis Agreement, and shall have no liability for any act or omission by a Supplier or other party under an Equalis Agreement.
10. This Agreement shall remain in effect unless terminated by one party giving thirty (30) days' written notice to the other party. The provisions of Paragraphs 5, 6, 7, 8 and 9 hereof shall survive any such termination.
11. If any term or provision of this Agreement is held invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
12. This Agreement and the rights and obligations hereunder may not be assignable by either party hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed, provided, however, that Purchasing Group Member and Equalis Group may assign their respective rights and obligations under this Agreement without the consent of the other party in the event either Purchasing Group Member or Equalis Group shall hereafter effect a corporate reorganization, consolidation, merger, merge into, sell to, or transfer all or substantially all of its properties or assets to another entity. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns. Any instrument purporting to make an assignment in violation of this **Section 12** will be null and void.
13. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
14. Each party to this Agreement acknowledges it has read the Agreement, and represents and warrants that it has the necessary legal authority and is legally authorized to execute and enter into this Agreement.
15. This Agreement shall take effect upon Purchasing Group Member (i) executing a copy of this Agreement, or (ii) registering on an Equalis Group Purchasing Program website.



The easiest way to complete this form is to visit: www.equalisgroup.org/member-registration. You may also fill out this form electronically, print and sign it, then scan and email the fully completed document to membership@equalisgroup.org.

Agency Information			
Agency Name:	McAllen Independent School District		
Agency Type:	Education - Primary/Secondary/PreK-12		
Agency Department:	Administration		
Street Address:	2000 N. 23rd St.		
City / St / Zip:	McAllen	Texas	78501
Phone #:	956-657-4480		
Federal Tax ID:	74-6001658		
Website URL:	www.mcallenisd.org		

Primary Contact Information	
Name:	Jose Gonzalez
Title:	Superintendent
Phone #:	956-618-6027
Email:	jose.gonzalez@mcallen.net

IN WITNESS WHEREOF, I hereby acknowledge, on behalf of McAllen Independent School District, that I have read and agreed to the general terms and conditions set forth in the Equalis Group Master Intergovernmental Purchasing Agreement.

Purchasing Group Member	
Name:	Alejandra Gonzalez
Title:	Director, Purchasing Services
Date:	10/07/2020

Signed: _____

Approved as to form:
Atlas, Hall & Rodriguez, LLP

by: Stephen L. Crain
Stephen L. Crain (Oct 7, 2020 16:29 CDT)

Stephen Crain

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: *Alejandra Gonzalez (Purchasing)*
Alejandra Gonzalez (Purchasing) (Oct 20, 2020 08:34 CDT)

SUPERVISOR: *Cynthia Medrano-Richards*

Approved for presentation to the Board of Education:

J. X. O'Connell

220

Superintendent of Schools


Request for Proposal No. 2021-099 - Travel Agent Services

	VENDOR	CONTACT INFORMATION	E-MAIL	AWARD
1	Feat Travel Inc. 11352 West State Road 84 Suite 204 Davie, FL 33325	Phone: (786) 309-3328 Chad Murray	info@feattravel.com	Recommended
2	Gerber Tours, Inc. and subsidiaries Contemporary Tours, Inc. and American Classic Tours & Music Festivals, LLC. 100 Crossways Park Drive Suite 400 Woodbury, NY 11797	Phone: (800) 645-9145 Amber Bardliving	support@gerbertours.com	Recommended
3	Grand Fund Inc. dba Green Light Group Tours 7 Old Mission Ave Saint Augustine, FL 32084	Phone: (800) 490-1820 Corey Black	corey@greenlightgrouptours.com	Recommended
4	Sunward Adventures A Partnership dba Sunward Adventures 1051 E Alessandro Blvd, #220 Riverside, CA 92508	Phone: (951) 697-6895 Brian E. Kerr	brian@sunward.com	Recommended
5	Texas Music Festivals Enterprise, Inc. 216 East Business Hwy 83 San Juan, TX 78589	Phone: (956) 984-9468 Angela Flinchbaugh	info@tmftoursandtravel.com	Recommended

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: 

SUPERVISOR: 
Arely Benavides (Oct 22, 2020 11:34 CDT)

Approved for presentation to the Board of Education:



222
Superintendent of Schools

Competitive Sealed Proposal No. 2021-021 Intercom Upgrade(s)

Project 1

Location 1 Alvarez Elementary School
Location 2 Brown Middle School
Location 3 Wilson Elementary School

		Vendor:	LMH & LMH, LLC dba Absolute Services	JSJ Rodriguez Inc. dbaTelePro Communications
		Rank → →	2	1
Total Points		100	83	92
1	AMOUNT/BASE BID (CONTINGENCY INCLUDED)	Max. Pts ↓	\$501,000.00	\$442,418.00
	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	53.0	60.0
2	List three (3) references of current or past projects completed within the past five (5) years of similar scope and size			
	<ul style="list-style-type: none"> The quality of the work provided by bidder. The bidder's history of providing warranty documents. The bidder's history of timeliness in completing warranty work. The bidder's history of staying on schedule. The bidder's cooperative attitude when working with the owner and its architect in resolving construction issues. The bidder's history of providing detailed documentation and a fair assessment of change order pricing. The bidder's history of repeat business with owner(s). 	3	3	2
	<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>			2 same scope/2 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
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	1	1
5	List three (3) current or past K-12 projects completed within the past five (5) years of similar scope and size where you have been the "Prime Contractor".	3	3	3
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
	<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>		2 same scope/2 same size	listed 1 fire alarm
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
8	List your company's history of on-time project completion (based on responses stated in questions 4-6)	3	2	2
			2 same scope/2 same size	2 same scope/2 same size
9	List your company's history of repeat business with project owner(s) for similar scope and size.	1	1	1
10	Attach " Workers Compensation Experience Rating " for the last three (3) years (2017-2019).	3	3	3
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
			2020 only	2017, 2018, 2019
12	Attach your company's safety program manual and/or procedures for current and new employees.	2	2	2
13	State the frequency safety inspections are conducted for projects.	1	1	1
14	Attach your company's drug/alcohol prevention policy and/or procedures.	1	1	1
15	Select the correct statement: <ul style="list-style-type: none"> General Contractor and will utilize 100% of your own forces. Describe the sufficient resources your company has to manage staff and successfully perform the work Joint venture or other type of arrangement. Describe type of arrangement. If using subcontractors, list the subcontractors by trade that will be assigned to this project. 	1	1	1

Competitive Sealed Proposal No. 2021-021 Intercom Upgrade(s)

Project 1

- Location 1 Alvarez Elementary School
- Location 2 Brown Middle School
- Location 3 Wilson Elementary School

		Vendor:	LMH & LMH, LLC dba Absolute Services	JSJ Rodriguez Inc. dbaTelePro Communications
16	<p>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.</p>	2	1	2
			<i>No JD</i>	
17	<p>Attach a letter from your surety company addressing the following points.</p> <p>1) Surety Company</p> <ul style="list-style-type: none"> • Listed in the State Board of Insurance, Bond Department's "List of Insurance Companies Licensed to Write Fidelity and Surety Bonds in Texas (http://www.tdi.texas.gov/commercial/pcbond.html) https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm • Is authorized to do business in Texas and is authorized to do business up to the limit of the contract. • Holds a certificate of authority from the U.S. Secretary of Treasury or has obtained reinsurance for any liability in excess of \$100,000. • AM Best Rating <p>2) Contractor</p> <ul style="list-style-type: none"> • Maximum bonding limit for the contractor • Aggregate/total available limit of coverage. • Years doing business with surety 	2	1	2
			<i>No Surety Letter</i>	
18	<p>List projects that your company currently has in progress. For each project listed address the following points:</p> <ul style="list-style-type: none"> • Name of project; • Owner's contact person and phone number; • Architect, Architect's contact person and phone number; • Contract amount; • Percent complete; • Scheduled completion date; • List total worth of work in progress and under contract 	1	1	1
19	<p>Attach a CURRENT financial statement</p> <ul style="list-style-type: none"> • Balance and income statement (indicating current assets, net fixed assets, other assets, current liabilities and other liabilities) • Financial statement (indicating name and address of firm preparing financial statement, and date thereof; • If the financial statement is not for the identical organization submitting offer, explain the relationship and financial responsibility of the organization whose financial statement is provided (parent, subsidiary, etc.) 	2	0	2
			<i>None</i>	
20	<p>Select your company's Dun & Bradstreet risk indicator and attach documentation (risk indicator 1 – 4): (1 pt.)</p>	1	1	0
				<i>None</i>
21	Bid Bond	1	1	1
22	Attach a proposed project schedule/timeline	2	0	0
			<i>None</i>	<i>None</i>



Competitive Sealed Proposal No. 2021-021 Intercom Upgrade(s)

Project 2

Location 1 Fossum Middle School
 Location 2 Hendricks Elementary School
 Location 3 Perez Elementary School

Competitive Sealed Proposal No. 2021-021 Intercom Upgrade(s)		Vendor:	LMH & LMH, LLC dba Absolute Services	JSJ Rodriguez Inc. dba TelePro Communications
		Rank →→	2	1
Total Points		100	81	92
1	AMOUNT/BASE BID (CONTINGENCY INCLUDED)	Max. Pts 1	\$524,000.00	\$449,295.00
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	51	60
2	List three (3) references of current or past projects completed within the past five (5) years of similar scope and size <ul style="list-style-type: none"> The quality of the work provided by bidder. The bidder's history of providing warranty documents. The bidder's history of timeliness in completing warranty work. The bidder's history of staying on schedule. The bidder's cooperative attitude when working with the owner and its architect in resolving construction issues. The bidder's history of providing detailed documentation and a fair assessment of change order pricing. The bidder's history of repeat business with owner(s). 	3	3	2
<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>				2 same scope/2 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
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	1	1
5	List three (3) current or past K-12 projects completed within the past five (5) years of similar scope and size where you have been the "Prime Contractor".	3	3	3
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
<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>			2 same scope/2 same size	listed 1 fire alarm
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
8	List your company's history of on-time project completion (based on responses stated in questions 4-6)	3	2	2
			2 same scope/2 same size	2 same scope/2 same size
9	List your company's history of repeat business with project owner(s) for similar scope and size.	1	1	1
10	Attach "Workers Compensation Experience Rating" for the last three (3) years (2017-2019).	3	3	3
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
			2020 only	2017, 2018, 2019
12	Attach your company's safety program manual and/or procedures for current and new employees.	2	2	2
13	State the frequency safety inspections are conducted for projects.	1	1	1
14	Attach your company's drug/alcohol prevention policy and/or procedures.	1	1	1
15	Select the correct statement: <ul style="list-style-type: none"> General Contractor and will utilize 100% of your own forces. Describe the sufficient resources your company has to manage staff and successfully perform the work Joint venture or other type of arrangement. Describe type of arrangement. If using subcontractors, list the subcontractors by trade that will be assigned to this project. 	1	1	1



Competitive Sealed Proposal No. 2021-021 Intercom Upgrade(s)

Project 2

Location 1 Fossum Middle School
 Location 2 Hendricks Elementary School
 Location 3 Perez Elementary School

Competitive Sealed Proposal No. 2021-021 Intercom Upgrade(s)		Vendor:	LMH & LMH, LLC dba Absolute Services	JSJ Rodriguez Inc. dba TelePro Communications
16	<p>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.</p>	2	1	2
			No JD	
17	<p>Attach a letter from your surety company addressing the following points.</p> <p>1) Surety Company</p> <ul style="list-style-type: none"> Listed in the State Board of Insurance, Bond Department's "List of Insurance Companies Licensed to Write Fidelity and Surety Bonds in Texas (http://www.tdi.texas.gov/commercial/pcbond.html) https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm Is authorized to do business in Texas and is authorized to do business up to the limit of the contract. <p>2) Contractor</p> <ul style="list-style-type: none"> 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 Maximum bonding limit for the contractor Aggregate/total available limit of coverage. Years doing business with surety 	2	1	2
			No Surety Letter	
18	<p>List projects that your company currently has in progress. For each project listed address the following points:</p> <ul style="list-style-type: none"> Name of project; Owner's contact person and phone number; Architect, Architect's contact person and phone number; Contract amount; Percent complete; Scheduled completion date; List total worth of work in progress and under contract 	1	1	1
19	<p>Attach a CURRENT financial statement</p> <ul style="list-style-type: none"> Balance and income statement (indicating current assets, net fixed assets, other assets, current liabilities and other liabilities) Financial statement (indicating name and address of firm preparing financial statement, and date thereof; If the financial statement is not for the identical organization submitting offer, explain the relationship and financial responsibility of the organization whose financial statement is provided (parent, subsidiary, etc.) 	2	0	2
			None	
20	Select your company's Dun & Bradstreet risk indicator and attach documentation (risk indicator 1 – 4): (1 pt.)	1	1	0
				None
21	Bid Bond	1	1	1
22	Attach a proposed project schedule/timeline	2	0	0
			None	None



Competitive Sealed Proposal No. 2021-021 Intercom Upgrade(s)

Project 3

Location 1 Gonzalez Elementary School
 Location 2 Garza Elementary School
 Location 3 Fields Elementary School

		Vendor:	LMH & LMH, LLC dba Absolute Services	JSJ Rodriguez Inc. dba TelePro Communications
		Rank → →	2	1
Total Points		100	83	92
1	AMOUNT/BASE BID (CONTINGENCY INCLUDED)	Max. Pts ↓	\$513,000.00	\$450,522.00
	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	53	60
2	<p>List three (3) references of current or past projects completed within the past five (5) years of similar scope and size</p> <ul style="list-style-type: none"> The quality of the work provided by bidder. The bidder's history of providing warranty documents. The bidder's history of timeliness in completing warranty work. The bidder's history of staying on schedule. The bidder's cooperative attitude when working with the owner and its architect in resolving construction issues. The bidder's history of providing detailed documentation and a fair assessment of change order pricing. The bidder's history of repeat business with owner(s). 	3	3	2
	<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>			<i>2 same scope/2 same size</i>
3	List any claims , judgments, arbitration proceedings or suits pending or outstanding against your company or its officers. If any, summarize the nature of the claims.	1	1	1
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	1	1
5	List three (3) current or past K-12 projects completed within the past five (5) years of similar scope and size where you have been the "Prime Contractor".	3	3	3
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
	<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>		<i>2 same scope/2 same size</i>	<i>listed 1 fire alarm</i>
7	List and attach three (3) references from major suppliers and/or sub-contractors within the past two (2) years which specifically address a) history of paying sub-contractors b) providing materials on time (Reference letters must be dated).	3	3	3
8	List your company's history of on-time project completion (based on responses stated in questions 4-6)	3	2	2
			<i>2 same scope/2 same size</i>	<i>2 same scope/2 same size</i>
9	List your company's history of repeat business with project owner(s) for similar scope and size.	1	1	1
10	Attach " Workers Compensation Experience Rating " for the last three (3) years (2017-2019).	3	3	3
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
			<i>2020 only</i>	<i>2017, 2018, 2019</i>
12	Attach your company's safety program manual and/or procedures for current and new employees .	2	2	2
13	State the frequency safety inspections are conducted for projects.	1	1	1
14	Attach your company's drug/alcohol prevention policy and/or procedures .	1	1	1
15	<p>Select the correct statement:</p> <ul style="list-style-type: none"> General Contractor and will utilize 100% of your own forces. Describe the sufficient resources your company has to manage staff and successfully perform the work Joint venture or other type of arrangement. Describe type of arrangement. If using subcontractors, list the subcontractors by trade that will be assigned to this project. 	1	1	1



Competitive Sealed Proposal No. 2021-021 Intercom Upgrade(s)

Project 3

Location 1 Gonzalez Elementary School
 Location 2 Garza Elementary School
 Location 3 Fields Elementary School

		Vendor:	LMH & LMH, LLC dba Absolute Services	JSJ Rodriguez Inc. dba TelePro Communications
16	<p>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.</p>	2	1	2
			No JD	
17	<p>Attach a letter from your surety company addressing the following points.</p> <p>1) Surety Company</p> <ul style="list-style-type: none"> Listed in the State Board of Insurance, Bond Department's "List of Insurance Companies Licensed to Write Fidelity and Surety Bonds in Texas (http://www.tdi.texas.gov/commercial/pcbond.html) https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm Is authorized to do business in Texas and is authorized to do business up to the limit of the contract. Holds a certificate of authority from the U.S. Secretary of Treasury or has obtained reinsurance for any liability in excess of \$100,000. AM Best Rating <p>2) Contractor</p> <ul style="list-style-type: none"> Maximum bonding limit for the contractor Aggregate/total available limit of coverage. Years doing business with surety 	2	1	2
			No Surety Letter	
18	<p>List projects that your company currently has in progress. For each project listed address the following points:</p> <ul style="list-style-type: none"> Name of project; Owner's contact person and phone number; Architect, Architect's contact person and phone number; Contract amount; Percent complete; Scheduled completion date; List total worth of work in progress and under contract 	1	1	1
19	<p>Attach a CURRENT financial statement</p> <ul style="list-style-type: none"> Balance and income statement (indicating current assets, net fixed assets, other assets, current liabilities and other liabilities) Financial statement (indicating name and address of firm preparing financial statement, and date thereof; If the financial statement is not for the identical organization submitting offer, explain the relationship and financial responsibility of the organization whose financial statement is provided (parent, subsidiary, etc.) 	2	0	2
			None	
20	<p>Select your company's Dun & Bradstreet risk indicator and attach documentation (risk indicator 1 – 4): (1 pt.)</p>	1	1	0
				None
21	<p>Bid Bond</p>	1	1	1
22	<p>Attach a proposed project schedule/timeline</p>	2	0	0
			None	None

AIA[®] Document A101[™] – 2017

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

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

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

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

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

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

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

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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

TABLE OF ARTICLES

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

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

INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

§ 3.3 Substantial Completion

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

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

By the following date:

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

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

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

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

ARTICLE 4 CONTRACT SUM

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

§ 4.2 Alternates

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

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

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

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

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

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

§ 4.4 Unit prices, if any:

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

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

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

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

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

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

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

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

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

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

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

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

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

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

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

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

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

§ 5.1.7 Retainage

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

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

(Paragraphs deleted)

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

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

None.

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

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

Retainage on any incomplete Work and Unsettled claims.

(Paragraph deleted)

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

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

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

§ 5.2 Final Payment

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

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

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

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

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

§ 5.3 Interest

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

■ %

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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

§ 6.2 Binding Dispute Resolution

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

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

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

(Paragraphs deleted)

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

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

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

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



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

§ 8.5 Insurance and Bonds

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

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

(Paragraphs deleted)

§ 8.7 Other provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

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

(Paragraphs deleted)

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

(Paragraph deleted)

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

Number	Title	Date

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

Section	Title	Date	Pages

.5 Addenda, if any:

Number	Date	Pages

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

.6 The following Exhibits, which are attached hereto:

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

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

OWNER:

CONTRACTOR:

McALLEN INDEPENDENT SCHOOL DISTRICT

[]

By: _____

By: _____

Printer Name:

Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____

Stephen L. Crain

EXHIBIT A

to

(Paragraph deleted)

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

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

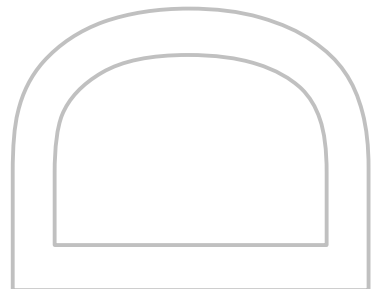
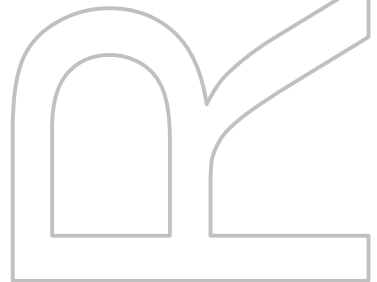
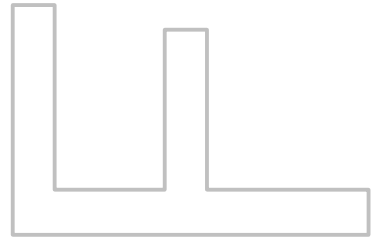
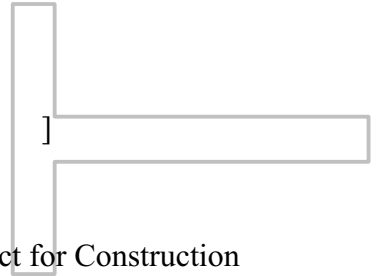


EXHIBIT B

to

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

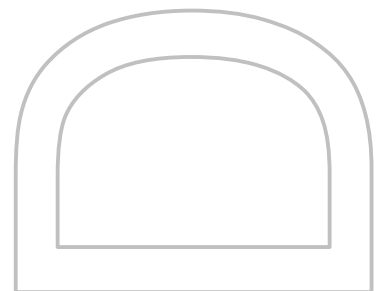
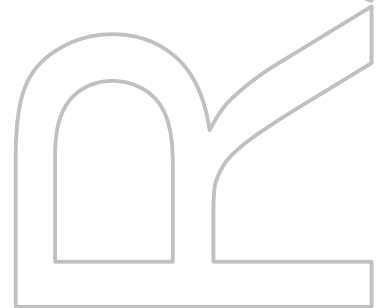
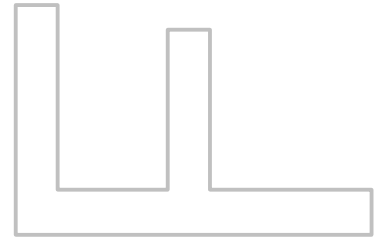
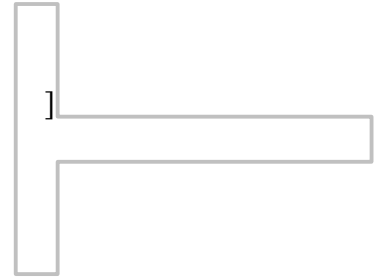


EXHIBIT C

to

(Table deleted)

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

Payment Bond

and

Performance Bond



(Table deleted)

EXHIBIT D

to

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

Contractor's Insurance Certificates

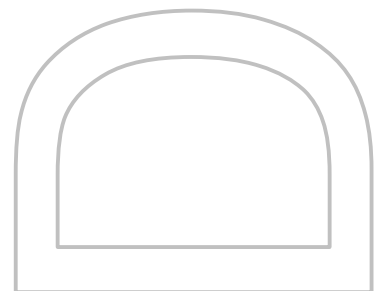
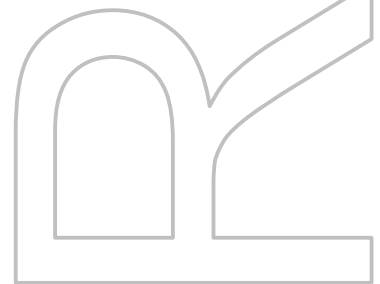
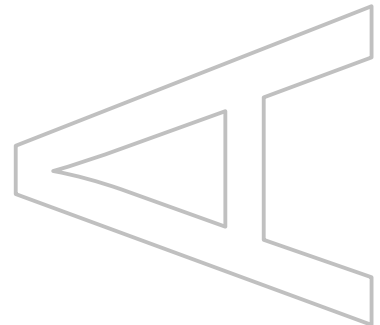
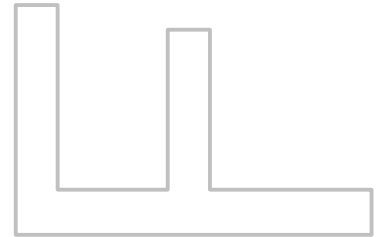
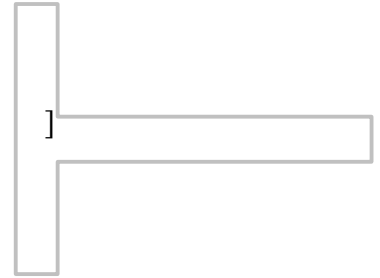


EXHIBIT E

to

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

Plans and/or Specifications

(Table deleted)



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

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ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

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

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

§ 2.1.2 DELETED.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

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

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

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

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

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

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

§ 3.5 WARRANTY

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

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

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

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

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

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

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

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

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

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

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

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

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

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

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

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

§ 3.9.3 DELETED.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

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

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.13 USE OF SITE

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

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

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

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

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

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

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

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

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

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

§ 3.20 RECORD DRAWINGS

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

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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

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

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

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

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

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

§ 4.2.13 DELETED.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

§ 6.2.3 DELETED.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

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

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

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

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

§ 9.6.7 DELETED.

§ 9.7 FAILURE OF PAYMENT

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

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

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

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

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

§ 10.3.3 DELETED.

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

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

§ 10.3.6 DELETED.

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

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

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES

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

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

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

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

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

§11.1.5.2 All policies shall contain special endorsements to include:

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

.6 the following coverage:

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

§11.1.5.6 Umbrella Excess Liability Insurance

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

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

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

§11.1.8 Workers' Compensation Insurance Coverage.

§11.1.8.1 Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

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

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

§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

§ 11.3.1.2 DELETED.

§ 11.3.1.3 DELETED.

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.

§ 11.3.3 LOSS OF USE INSURANCE DELETED.

§ 11.3.4 DELETED.

§ 11.3.5 DELETED.

§ 11.3.6 DELETED.

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

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

§ 11.3.9 DELETED.

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

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

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

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

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

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

§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT

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

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

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

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

(Paragraphs deleted)
stopped.

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

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

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

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

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

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

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

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraph deleted)

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

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

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

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

§ 15.2.8 DELETED.

§ 15.3 MEDIATION

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

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

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

§ 15.4 ARBITRATION

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

OWNER:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

Date

CONTRACTOR:

[_____]

By: _____
Printed Name: _____
Title: _____

Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)



**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 26, 2020

SUBMITTED BY: 

SUPERVISOR: 
Arely Benavides (Oct 22, 2020 11:58 CDT)

Approved for presentation to the Board of Education:



296
Superintendent of Schools

Event Number	2021-138 Addendum 2	Organization	McAllen ISD Purchasing
Event Title	Achieve Early College C	Workgroup	Purchasing
Event Description	*****In light of the cu	Event Owner	Elizabeth Cabrera
Event Type	RFCQ	Email	elizabeth.cabrera@mcallenisd.net
Issue Date	9/16/2020 06:33:34 PM	Phone	
Close Date	9/29/2020 03:00:00 PM	Fax	

Responding Supplier	City	State	Response Submitted	Lines Responded	Response Total	Recommendation
D. Wilson Construction Company	McAllen	TX	9/29/2020 02:57:34 PM (CT)	1	\$870,790.00	Recommend
Noble Texas Builders	La Feria`	TX	9/29/2020 01:45:06 PM (CT)	1	\$920,506.00	
SpawGlass Contractors, Inc.	Harlingen	TX	9/29/2020 02:49:46 PM (CT)	1	\$984,678.00	

Please note: Lines Responded and Response Total only includes responses to specification. No alternate response data is included.

AIA[®] Document A101[™] – 2017

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

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

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

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

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

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

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

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
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- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
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EXHIBIT A MODIFIED AIA DOCUMENT A201-2007, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
EXHIBIT B CONTRACTOR'S PROPOSAL
EXHIBITS C PAYMENT AND PERFORMANCE BONDS
EXHIBIT D CONTRACTOR'S INSURANCE CERTIFICATES
EXHIBIT E PLANS AND SPECIFICATIONS

INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

§ 3.3 Substantial Completion

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

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

By the following date:

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

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

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

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

ARTICLE 4 CONTRACT SUM

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

§ 4.2 Alternates

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

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

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

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

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

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

§ 4.4 Unit prices, if any:

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

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

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

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

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

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

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

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

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

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

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

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

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

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

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

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

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

§ 5.1.7 Retainage

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

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

(Paragraphs deleted)

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

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

None.

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

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

Retainage on any incomplete Work and Unsettled claims.

(Paragraph deleted)

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

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

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

§ 5.2 Final Payment

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

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

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

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

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

§ 5.3 Interest

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

■ %

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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



§ 6.2 Binding Dispute Resolution

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

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

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

(Paragraphs deleted)

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

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

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

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



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

§ 8.5 Insurance and Bonds

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

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

(Paragraphs deleted)

§ 8.7 Other provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

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

(Paragraphs deleted)

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

(Paragraph deleted)

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

Number	Title	Date

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

Section	Title	Date	Pages

.5 Addenda, if any:

Number	Date	Pages

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

.6 The following Exhibits, which are attached hereto:

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

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

OWNER:

CONTRACTOR:

McALLEN INDEPENDENT SCHOOL DISTRICT

[]

By: _____

By: _____

Printer Name:

Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____

Stephen L. Crain

EXHIBIT A

to

(Paragraph deleted)

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

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



EXHIBIT B

to

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

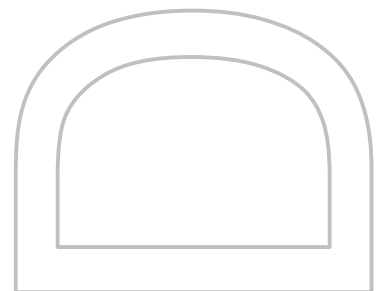
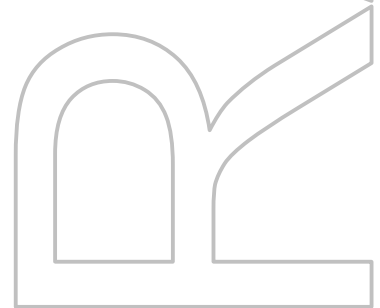
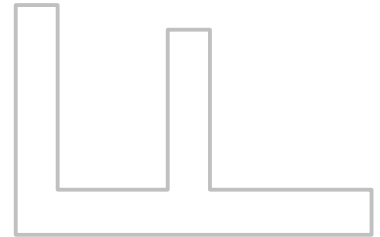
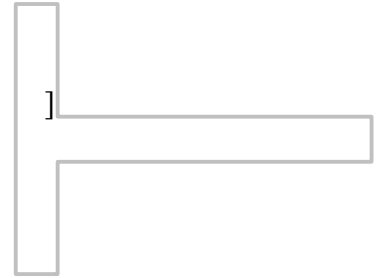


EXHIBIT C

to

(Table deleted)

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

Payment Bond

and

Performance Bond



(Table deleted)

EXHIBIT D

to

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

Contractor's Insurance Certificates

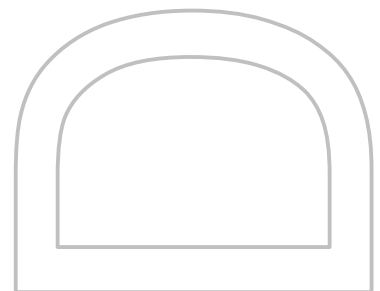
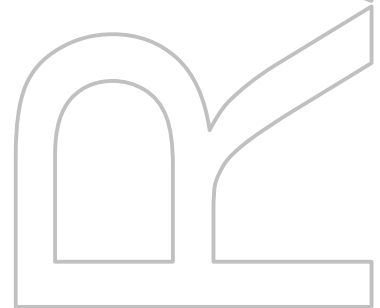
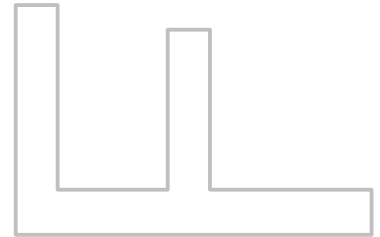
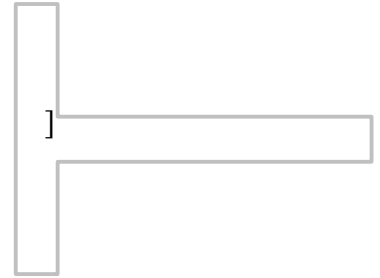


EXHIBIT E

to

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

Plans and/or Specifications

(Table deleted)



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

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ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

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

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

§ 2.1.2 DELETED.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

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

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

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

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

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

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

§ 3.5 WARRANTY

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

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

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

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

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

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

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

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

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

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

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

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

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

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

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

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

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

§ 3.9.3 DELETED.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

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

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.13 USE OF SITE

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

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

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

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

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

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

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

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

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

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

§ 3.20 RECORD DRAWINGS

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

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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

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

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

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

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

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

§ 4.2.13 DELETED.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 DELETED.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may only be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents and is subject to the approval of the Owner.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect and is subject to the approval of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited, to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.2.3 Contractor shall keep and periodically submit to Owner copies of a log for all Change Orders.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Contractor shall keep and periodically submit to Owner copies of a log for all Construction Change Directives and a log for all requests for information.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation in writing between the Owner and the Contractor;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon in writing between the Owner and the Contractor;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, in each case in writing between the Owner and the Contractor; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed a total maximum of **fifteen percent (15%)** for all Work, and further limited to as follows, not to exceed five percent (5%) for Work done by Contractor's employees and **ten percent (10%)** of such Work's actual cost to be apportioned between any and all Subcontractors and Sub-subcontractor. "Actual cost" does not include any item that could be deemed to be a general conditions cost or overhead, such as, but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority after having obtained Owner's approval to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.1.1 The Work shall be fully completed within the time limit and/or date stated in the Contract between Owner and Contractor.

§ 8.1.1.2 Liquidated Damages: If the Contractor should fail to fully complete the Work within the stated time (subject however to extension of time duly granted in the manner and for the causes specified in the General Conditions), Contractor shall be charged by and shall pay to Owner, as liquidated damages, the sum specified in Article 3 of the AIA document A101 – 2017 by and between Owner and Contractor to which this document is attached as Exhibit A per calendar day that the Work remains incomplete beyond the time fixed for completion. Contractor hereby agrees that from the nature of the project it would be impracticable and extremely difficult to fix the actual damage that would or will be suffered in the event that Contractor should fail to fully complete the Work by the time limit or date stated and the amount of the liquidated damages are fair and reasonable. The parties agree that the liquidated damages are a reasonable forecast of just compensation for the harm done to Owner that would be caused by Contractor's failure to timely complete the Work. Contractor agrees that the amount of liquidated damages due Owner may be deducted by Owner from any monies that might otherwise be or become payable to Contractor.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes

beyond the Contractor's control; or by delay authorized by Owner pending mediation, or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or that are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contractor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. Changes in the Work, regardless of the extent or number of such Changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.1 Commitment of Current Revenues Only. As reflected in Section 4.5 of the modified AIA document A101 – 2017 Edition by and between Owner and Contractor to which this document is attached as Exhibit A, in the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as Architect may direct or as required by Owner. This schedule, when approved by Architect and Owner, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment. All items with entered values will be transferred by Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by Architect and approved by Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Any

allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an office of Contractor to the effect that:

There are no known mechanics', materialman's or laborers' liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialman's or laborers' lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the Work; and waivers and releases from all Subcontractors, laborers, and material men for Work done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to Architect together with Contractor's waiver and release of liens and claims at the time of submission of the Application for Payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing by the Owner and Surety. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and

inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified and that the aggregate amount theretofore paid to Contractor plus any applicable retention does not exceed the value of the completed portion of the Work. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion within the Contract Time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 DELETED.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Contract, including but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7 pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner sole discretion, elect either to (i) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (ii) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of issuance of the certificate of final payment by Architect unless otherwise provided in the Certificate of Substantial Completion. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner and/or Owner's employees and if applicable, the public, could occupy the building on that date and the completing of the Work by Contractor would not materially interfere or hamper Owner's or Owner's employees and if applicable, the public, (or those claiming by, through, or under Owner) from normal County operations. As a further condition of Substantial Completion acceptance, Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If Contractor requests a Substantial Completion review, and Architect, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then Contractor shall pay the Architect's fees for any additional Substantial Completion reviews.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

§ 9.8.7 After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contractor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any portion of the Work authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing after Substantial Completion.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons

or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 DELETED.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 DELETED.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES

§ 11.1.5.1 Contractor shall carry and keep in full force for the duration of the project the following Coverage.

Coverage	Minimum Amounts and Limits
Worker's Compensation	
Employer's Liability:	Statutory Limits
Bodily Injury by Accident	\$500,000.00/each accident
Bodily Injury by Disease	\$500,000.00/each employee
Bodily Injury by Disease	\$500,000.00/Policy Limit
 Commercial General Liability	
Bodily Injury/Property Damage	\$1,000,000.00 per occurrence \$2,000,000.00 aggregate

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

Comprehensive Automobile Liability \$1,000,000.00 Combined Single
Limit per Occurrence

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see Section 3.18).

§11.1.5.2 All policies shall contain special endorsements to include:

1. The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);
2. 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);

.6 the following coverage:

- a. Premises/Operations;
- b. Independent Contractors;
- c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
- d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed);
- e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;
- f. Personal Injury Liability with the contractual exclusions removed;
- g. Cross Liability Endorsement.

§11.1.5.6 Umbrella Excess Liability Insurance

Bodily Injury and Property Damage	\$2,000,000.00 per occurrence \$2,000,000.00 aggregate
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This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

§11.1.6 Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

§11.1.7 In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

§11.1.8 Workers' Compensation Insurance Coverage.

§11.1.8.1 Definitions:

- .1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- .2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- .3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§11.1.8.2 The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

§11.1.8.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

§11.1.8.4 If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

§11.1.8.5 The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- .1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- .2 no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

§11.1.8.6 The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

§11.1.8.7 The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

§11.1.8.8 The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§11.1.8.9 The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- .1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- .2 provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- .3 provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- .4 obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- .5 retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- .6 notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- .7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

§11.1.8.10 By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.1.8.11 The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.2.1 By signing the Contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that coverage will be based on proper reporting or classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.2.2 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Article 11.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Contractor shall obtain a builder's risk "all-risk" or equivalent policy in the amount of the initial Contract Sum (or if applicable Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The policy must also name its subcontractors and the Owner as additional insured, as their respective interests may appear. Coverage shall include material stored on-site and in transit. Such insurance will be with a company or companies lawfully authorized to do business in Texas. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed \$2,500.00 for a Contract Sum of less than \$4 million. For a Contract Sum of \$4 million or more, the deductible shall not exceed \$5,000.00.

§ 11.3.1.1.2 The Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their Subcontractors, Sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as a fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.1.1.3 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to their Sub-subcontractors in similar manner. If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds.

§ 11.3.1.2 DELETED.

§ 11.3.1.3 DELETED.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use shall not affect the validity or coverage of property insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.

§ 11.3.3 LOSS OF USE INSURANCE DELETED.

§ 11.3.4 DELETED.

§ 11.3.5 DELETED.

§ 11.3.6 DELETED.

§ 11.3.7 WAIVERS OF SUBROGATION

Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents and employees, and (2) the Architect, Architect's consultants, separate contractors if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Article 11 or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate

written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 DELETED.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the faithful performance of the Contract and also a one hundred percent (100%) Payment Bond, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with the Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Subchapter A of Chapter 3503 of the Texas Insurance Code.

§11.4.1.1 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting. All Bonds will be reviewed by the Architect for compliance with the Contract Documents prior to the execution of the Contract. In the event that Architect has any questions concerning the sufficiency of the bonds, Architect shall refer the bonds to Owner or Owner's representative for decision.

§11.4.1.2 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be on or after the date of execution of the Contract but prior to the date of the notice to proceed. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs

and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect as incomplete, defective, or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work (unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This corrective period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. Corrective Work shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective Work or one (1) year after the Date of Substantial Completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from Owner. This obligation under this Section 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 Just before the termination of the various guarantee periods, Contractor shall accompany Owner's agent and Architect on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the Work without interruption until accepted by Owner and Architect, even though such prosecution should extend beyond the limit of the guarantee period.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor's correction or removal of Work that is defective or otherwise not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents or under law or in equity. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is defective or otherwise not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice or if delivered by facsimile to the offices of the person or corporation for which it was intended. Facsimiles received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. Architect or Owner may at any time request and receive from Contractor satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

§ 13.5.4 Required certificates of testing, inspection or approval shall, be secured by the Contractor and delivered to the Owner, unless such testing or inspection services are arranged by Owner.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

An overdue payment bears interest at the legal rate established by the Texas Government Code, currently in Section 2251.025, or in the event no rate is so established, at the rate of one percent (1%) each month. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives an invoice from Contractor.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

§ 13.8.1 The Contractor shall maintain policies of employment as follows: "The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies."

§13.8.1.1 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT

§13.9.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10 by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the construction company.

§13.9.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

§13.9.3 Final payment shall not be made until this letter of certification has been received.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency that requires all Work to be

(Paragraphs deleted)
stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed in accordance with the Contract Documents.

§ 14.1.4 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Sections 14.1.1 and 14.1.2.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials and equipment;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or
- .6 otherwise does not fully comply with the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs that would have been payable to Contractor to complete the Work except for

Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by Owner and confirmed by Architect.

§14.2.5 In addition to Owner's right to remove Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of Work or any subcontract or all remaining Work for any reason whatsoever by giving seven (7) days' prior written notice to Contractor specifying the part of Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of Work not terminated. If any part of Work or subcontract is so terminated, Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

§14.2.6 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Section 14.2.5.

§14.2.7 Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.2.5.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, without any overhead or profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right adjustment, or interpretation of the Contract Terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be by written notice.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause or causes of the claim, and if any extension of time is requested, the number of days of extension requested.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be value unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Architect determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraph deleted)

Contractor shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor.

§ 15.1.7 In the event the Contractor fails to achieve substantial completion by the date indicated in the Contract, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount as stated in Section 3.1.1 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor to which this document is attached as Exhibit A per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult and in no sense be considered a penalty.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim in whole or in part, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation.

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 DELETED.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract may be subject to mediation as a condition precedent to litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

§ 15.3.3 The parties shall share the mediator's fee. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

The parties expressly agree that disputes or claims arising under the Contract Documents shall not be subject to arbitration unless mutually agreed by the parties in writing.

OWNER:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

Date

CONTRACTOR:

[_____]

By: _____
Printed Name: _____
Title: _____

Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)

