



## Agenda of Regular Meeting

### The Board of Trustees McAllen Independent School District

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<b>VISION</b>	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.
<b>MISSION</b>	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.
<b>GOALS</b>	<ol style="list-style-type: none"><li>1. Student Achievement/Student Focus</li><li>2. People Development</li><li>3. Facility Priorities</li><li>4. Financial Priorities</li></ol>
<b>STRATEGIES</b>	<ol style="list-style-type: none"><li>1. Branding</li><li>2. Attract/Retain High Quality Staff</li><li>3. Engaging Learning Environment</li><li>4. Rigorous/World Class Standards to Customize for Every Learner</li><li>5. Partnerships with Business/Civic/Education/Organizations</li><li>6. Future Ready Students</li><li>7. Financial Priorities</li></ol>

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

Due to health and safety concerns related to COVID 19 Coronavirus this meeting will be conducted by Videoconference or telephone call in accordance to Section 551.125 of the Texas Government Code.

Members of the public may access this meeting by videoconference at [www.mcallenisd.org](http://www.mcallenisd.org) or by telephone call at 956 618-6094.

Public comments related to this meeting will be handled as follows: Public comments may be 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) Director of Health Services
- D) Pending and/or Potential Litigation
- E) Possible Real Estate Acquisition

**4. RECONVENE IN OPEN SESSION**

**5. INVOCATION**

**6. PLEDGE OF ALLEGIANCE**

**7. PUBLIC HEARING REGARDING THE PRESENTATION OF WILLIAM B. TRAVIS MIDDLE SCHOOL'S TARGETED IMPROVEMENT PLAN**

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Item Submitted: Bridgette Vieh, Associate Superintendent Instructional Leadership

**Presenter:** Dr. J. A. Gonzalez, Superintendent

**8. SUPERINTENDENT'S REPORT(S) - McAllen High students earn top honors at National Mariachi Vocals contest! | McAllen ISD**

**Presenter:** Dr. J. A. Gonzalez, Superintendent

**9. RECOGNITION(S)**

- A) Recognition of AP Scholar, College Board Recognitions and National Merit Scholarship Program Recipients
- Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services

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**Presenter:** Dr. J. A. Gonzalez, Superintendent

- B) Recognition of \$25,000 Donation from McAllen American Federation of Teachers to McAllen ISD
- Item Submitted: Arely Benavides, Assistant Superintendent District Operations

20

**Presenter:** Dr. J. A. Gonzalez, Superintendent

**10. PROCLAMATION(S)**

**11. DONATION(S)**

**12. 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 Facilities, Maintenance & Operations Projects Item Submitted: Arely Benavides, Assistant Superintendent District Operations	21
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
2. Report Regarding ADA Hold Harmless Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations	36
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
3. Report Regarding the Monthly Financial and Investment Report for October 2020 Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations	44
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
4. Report Regarding Taxes Collected for October 2020 Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations	71
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
<b>13. ACTION ON ITEM(S) IN CLOSED SESSION</b>	
A) Approval of Human Resources Recommendation(s) for School Year 2020-2021 Item Submitted: Todd Miller, Assistant Superintendent Human Resources	73
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
B) Human Resources Employee Resignation(s) for School Year 2020-2021 Item Submitted: Todd Miller, Assistant Superintendent Human Resources	74
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
C) Approval of the Director of Health Services Item Submitted: Todd Miller, Assistant Superintendent Human Resources	75
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
D) Pending and/or Potential Litigation	
E) Possible Real Estate Acquisition	
<b>14. CONSENT AGENDA ITEMS</b>	
A) Approval of Interlocal Agreement No. 2021-186 Texas School for the Blind and Visually Impaired Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services	76
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
B) Approval of Request for Co-operative Quotes ("RFCQ") No. 2021-157 - Replacement of Doors at McAllen High School through Interlocal Cooperative Agreement No. 2020-002 Texas Association of School Board ("TASB") Buyboard Item Submitted: Arely Benavides, Assistant Superintendent District Operations	81
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	

- C) Approval of Request for Proposal No. 2021-156 Graphic Design and Cafeteria Decor 94  
Item Submitted: Arely Benavides, Assistant Superintendent District Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- D) Approval of First Amendment to Contract No. 2021-143 Alan Yoder Enterprises, Incorporated dba Superior Alarms through Request for Proposal No. 2020-264 108  
Item Submitted: Arely Benavides, Assistant Superintendent District Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- E) Approval of Bid No. 2021-018 Glass Glazing Supplies & Installation Services 111  
Item Submitted: Arely Benavides, Assistant Superintendent District Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- F) Approval of Memorandum of Understanding No. 2021-181 with the City of McAllen for a Co-Location Data and Network Operations Center 118  
Item Submitted: Arely Benavides, Assistant Superintendent District Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- G) Approval of Request for Proposal No. 2021-1008 Imaging Services 123  
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- H) Approval of Weapon Purchase by District Police Officer Daniel Garcia 125  
Item Submitted: Captain Jose Silva, McAllen ISD Police Department  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- I) Approval of Weapon Purchase by District Police Chief Crisoforo Esquivel upon Retirement 126  
Item Submitted: Captain Jose Silva, McAllen ISD Police Department  
**Presenter:** Dr. J. A. Gonzalez, Superintendent

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

- A) **Instructional Services Item(s)** (Dr. Silvia Ibarra) **Instructional Leadership Item(s)** (Bridgette Vieh)
1. Approval of William B. Travis Middle School's Targeted Improvement Plan 127  
Item Submitted: Bridgette Vieh, Associate Superintendent Instructional Leadership  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
2. Approval of District HB3 Board Goals in Early Literacy, Early Math, and CCM~~8~~ 8  
Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services

<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
3. Approval of Campus HB3 Board Goals in Early Literacy, Early Math, and CCMR	143
Item Submitted: Dr. Silvia Ibarra, Assistant Superintendent Instructional Services	
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
<b>B) Human Resources Item(s) (Todd Miller)</b>	
1. Approval of Amended and Restated Third Amendment to Superintendent's Employment Contract	144
Item Submitted: Todd Miller, Assistant Superintendent Human Resources	
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
2. Approval of Revision to 2020-2021 Board Approved Stipends for Project RISE	149
Item Submitted: Todd Miller, Assistant Superintendent Human Resources	
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
3. Approval of Request For Proposal No. 2021-134 Specific and Aggregate Medical and Pharmacy Claims Stop Loss Insurance	152
Item Submitted: Todd Miller, Assistant Superintendent Human Resources	
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
4. Resolution to Declare all Texas Educators as FRONTLINE WORKERS	158
Item Submitted: Todd Miller, Assistant Superintendent Human Resources	
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
<b>C) District Operations Item(s) (Arelly Benavides)</b>	
1. Approval of Request for Proposal ("RFP) Construction Manager at Risk Services ("CMAR") 2021-137 Veterans Memorial Stadium New Press Box	161
Item Submitted: Arelly Benavides, Assistant Superintendent District Operations	
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
2. Request for Action Regarding Bid No. 2021-1006 Sale of Real Property (old I&G) Re-Bid and Resolution No. 2021-198 with Maria Dolores Diaz	273
Item Submitted: Arelly Benavides, Assistant Superintendent District Operations	
<b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	
<b>D) Business Operations Item(s) (Cynthia Medrano Richards)</b>	
1. Approval of 2020 McAllen ISD Tax Roll	303
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations	

**Presenter:** Dr. J. A. Gonzalez, Superintendent

2. Approval of the McAllen Independent School District November Budget Amendment for Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021 309

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent  
Business Operations

**Presenter:** Dr. J. A. Gonzalez, Superintendent

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

1. Approval of Board of Education Meeting Minutes 315

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

**16. SCHEDULE OF FUTURE MEETINGS**

A) Regular Board Meeting - January 18, 2021 - 5:00 P.M. - TBD

B) Regular Board Meeting - February 22, 2021 - 5:00 P.M. - TBD

C) Regular Board Meeting - February 9, 2021 - 5:00 P.M. - TBD

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

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

**19. ADJOURNMENT**

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*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 December 11, 2020 at 4:00 P.M.*

*Natalia Goza*

*For the Board of Trustees*

# William B Travis Middle School Targeted Improvement Plan

December 14, 2020



## Legislative Code



- Texas Education Code §39.055
  - Any campus that has earned a “D” in any domain
- Texas Administrative Code §39A.057
  - Requires any plan to be posted on the district’s website before the hearing

# William B Travis Middle School Accountability Scores



	Domain 1		D1 Letter Grade	Domain 2A		D2A Letter Grade	Domain 2B		D2B Letter Grade	Domain 3										D3 Letter Grade	Overall Total	Overall Letter Grade
	Student Achievement			Academic Growth			Relative Performance			Closing the Gaps												
	Raw	Scaled		Raw	Scaled		Raw	Scaled		Academic Achievement (30%)		Academic Growth (50%)		ELP (10%)		Student Success (10%)		Overall Raw	Overall Scaled			
										Indicators Met	Indicators Eligible	Indicators Met	Indicators Eligible	Indicators Met	Indicators Eligible	Indicators Met	Indicators Eligible					
18-19	37	69	D	66	70	C	<u>37</u>	<u>80</u>	B	7	14	7	14	0	1	1	8	41	73	C	78	C
17-18	38	70	N/A	69	75	N/A	<u>38</u>	<u>81</u>	<u>N/A</u>	6	14	9	14	1	1	2	8	57	77	N/A	80	N/A

- 2019 – 2020 Was not Rated due to State Declared Disaster from the COVID-19 pandemic.
- As of Dec. 10, 2020 TEA suspended accountability for the 2020-2021 school year

# Meet Our Admin Team



**EFRAIN AMAYA**  
Principal



**FAYNNA GUERRERO**  
Assistant Principal

**KRISTINA VENECIA**  
Assistant Principal



**RICHARD TAMEZ**  
School Imp. Facilitator

**BRENDA GLORIA**  
Counselor

**IRASEMA GONZALEZ**  
Counselor

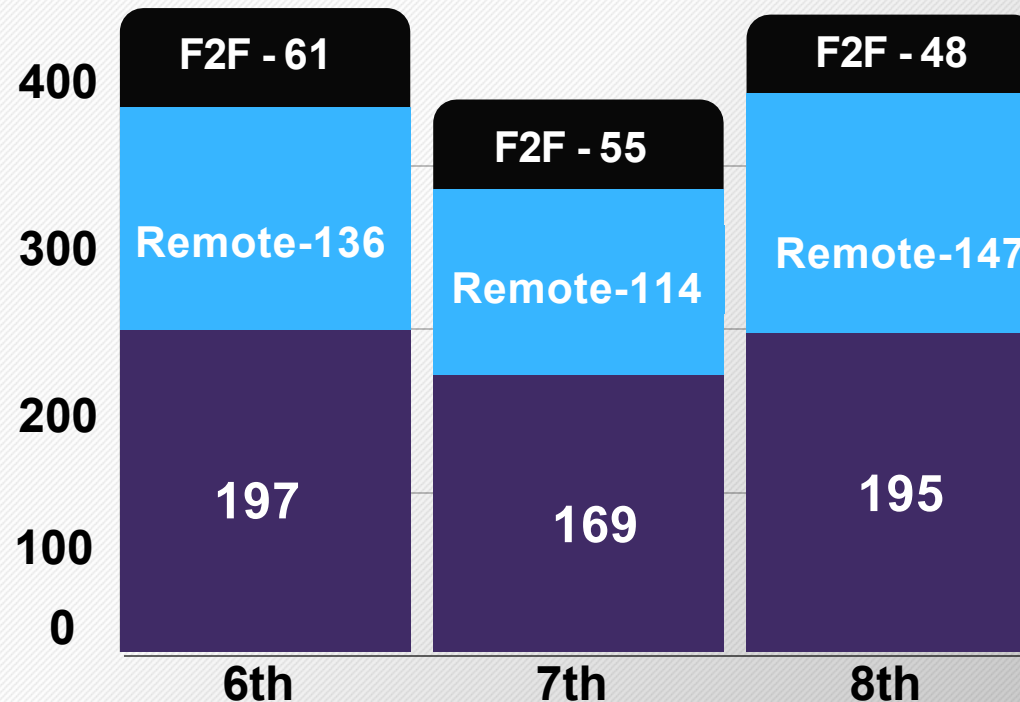
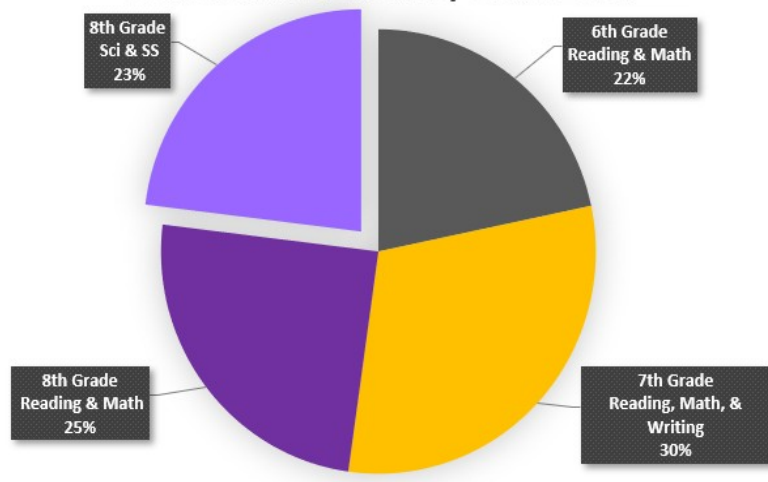
\* Picture is edited with Photoshop



# Travis at a glance



Student Achievement by Grade Level



Total Percentages

Eco Dis	ELs	SPED
96%	63%	19%
541	351	107
<b>Total- 561</b>		

Face to Face Daily Average between 105 - 120

# ELA Adjustments (19/20 has Master Teacher - now in 2<sup>nd</sup> year)



Benchmarks - 8 <sup>th</sup> grade only with 4 week left of instruction	Approaches	Meets	Masters
Spring 2019 vs. Spring 2020	+6%	+2%	+3%

System of Support	Description
Curriculum Writing	Considering changes to instructional methods and a focus on remote instruction, curriculum was designed with the help of teachers from Travis Middle School to meet the needs of all learners regardless of the learning face-to-face or remotely.
New Teacher Orientation	The Literacy Department presented to all new teachers on best practices in remote learning. Further, the English Language Arts Department provided Professional Learning for teachers new to the department. Travis Middle School hired two new teachers last year and two additional this year.
Content Support Sessions	The English Language Arts Department supports all teachers through ongoing grade-level-specific content support sessions.
Teacher-Led Tech Training	Teachers were trained on best practices in implementing tech tools and digital resources in the ELAR classroom. These include: Google Classroom, Google Slides, Google Sites, Google Forms, PearDeck, EdPuzzle, Wakelet, CommonLit, Newsela, ThingLink, and others.
Facilitated Planning Sessions/ Campus Visits	The English Language Arts Department supports Travis Middle School ELAR teachers by assisting in planning new units, lessons, and activities. This is further facilitated by campus check-ins (which have now moved online; see below)
Writing Camps	Students received support from their campus teacher and the literacy team. Student groups were targeted at the APPROACHES to MEETS bubble or at the MEETS to MASTERS bubble to ensure growth.
Reading Camps	Students were provided with the opportunity to refine their critical reading skills through reading “Blue Camps” targeting students at the MEETS level to help them grow to MASTERS.
Planning Drop-ins (Via TEAMS)	Due to COVID-19, campus planning has been moved online. Facilitated Planning Support is offered through the Microsoft Teams application.

# TELPAS

## READING

9% of our students moved up at least 1 level

## LISTENING

14% of our students moved up at least 1 level

## SPEAKING

41% of our students moved up at least 1 level



# Math Adjustments



Benchmarks – 8 <sup>th</sup> grade only	Approaches	Meets	Masters
Spring 2019 vs Spring 2020	Testing incomplete due to COVID 19 (8 <sup>th</sup> Grade Math and Alg. 1 EOC)		

- **For advanced level students:**

- 6th/7th Accelerated Math Summer Enrichment Camp
  - 2 week summer camp
- Algebra Blended Summer Enrichment Camp
  - 2- week summer camp
- Algebra I Pre-AP College Board summer training
  - 2- week summer training
- Geometry Pre-AP College Board summer training
  - 2 - week summer training

- **For all grade levels:**

- Professional Learning 1-2 times a semester for every grade level
  - 6th, 7th & 8th grade, 6th/7th Accel., Algebra Blended, and Algebra I Pre-AP
- Mini-assessments 1-2 times a semester for every grade level
  - 6th, 7th & 8th grade, 6th/7th Accel., Algebra Blended, and Algebra I Pre-AP
- Training on Pear Deck and Kami (specific platforms for math students)

# Science Adjustments



Benchmarks – 8th grade only with 8 weeks left of instruction	Approaches	Meets	Masters
Spring 2019 vs Spring 2020	+14%	0%	0%

- **8th Grade Planning** visits monthly in the Fall that emphasized scaffolding of material and rigor of instruction to match rigor of STAAR
- **6th & 7th grade Lesson planning** visits weekly starting in November
  - 8th Grade STAAR test is cumulative and covers TEKS from 6th-8th grade
  - Included classroom visits for observations
- **8th Grade Success Plan** to map out weeks of focused instruction between Spring benchmark and STAAR test
- Provided drive folders by grade level for **spiral review and activities** based on fall benchmark data
- Provided **Friday Night Lights** framework (tutoring for Meets & Masters students)
  - 7 station activities with instructions and materials needed
  - 3 stations focused on analyzing STAAR question stimuli (pic, graph, diagram)
  - 4 stations focused on answering STAAR format questions<sup>14</sup>
  - Attended FNL for support

# Social Studies Adjustments



Benchmarks - 8th grade only with 8 weeks left of instruction	Approaches	Meets	Masters
Spring 2019 vs Spring 2020	+11%	+16%	+9%

## 2018-2019

- Mastering the TEKS in Grade 8 SS
- Sirius Preparation Workbook
- Social Studies Success Lessons
- TX Coach Workbook
- Warm up to Social Studies Part 1 & 2

SS Coordinator assisted with STAAR Review and STAAR Tutorials.

- April 2, 2019 STAAR Blitz Planning
- April 26, 2019 Provided STAAR Blitz Games
- May 9, 2019 STAAR Blitz

## NEW in 2019-2020

- NEW Exploros 5 E Digital Program
- More on campus support (weekly)

## NEW in 2020-2021

- NEW Digital Interactive Student Notebook
- NEW LRE Modules per Unit

SS Coordinator Created Digital STAAR Review Activities - Pear Deck Slides for Review, Tutorials & Blitz



# Travis Action Plan TOOLS

## ADAPTIVE MEASURES



### ELAR

- Reading IXL (ELAR)
- Summit K<sub>12</sub>
- Writing Camps
- EL Camps (Bil. Dept)
- Writing Tablets
- Notice and Note (Strategy)
- Quintile Groups
- SPED Pods
- 6<sup>th</sup> Grade Blocks
- Recruitment of Staff



### MATH

- Math IXL
- Math Accelerated Camps
- Quintile Groups
- SPED Pods



### SCIENCE

- Blended Interactive Journal
- Category Folders
- Coordinator Intervention Support
- Recruitment of Staff
- Restructured Team
- Writing Tablets
- Bilingual Support
- Nearpod



### SOCIAL STUDIES

- Exploros
- Digital Interactive Journal
- Prioritizing on Specific TEKS
- Pre-teaching
- Spiral Reviews
- Continuous Coordinator Support

- Project Rise
- PLCs
- Intentional Planning
- Kami/DocHub
- Screen Castify
- Jamboard<sup>16</sup>
- Padlet
- Edpuzzle
- Peardeck
- Gizmo
- Checkpoints
- Bell Ringers



# Terrier Terms for T.A.P



## STUDENT INDIVIDUAL PRESCRIPTIONS

*All students will receive TWO intervention programs*

### STAAR TUTORING

Mondays and Wednesdays  
afterschool  
(Approaches to Meets)

### ENRICHMENT SATURDAYS

Saturdays from 9-12  
based on color bands and  
singleton

### FRIDAY NIGHT LIGHTS

Meets and Masters Club

### W.I.N. WHATEVER I NEED

Intervention for Special  
Pops and Quintile Groups  
on Asynchronous days

### ADDITIONAL TUTORING

Recovery Intervention

# In Closing



- Website link : <https://www.mcallenisd.org/page/misd-campus-improvement-plans>
  - Campus Improvement Plan
  - Campus Executive Summary
  - Campus Target Plan for Improvement
- Parent and Community Meeting dates were held as follows:
  - Dec. 1, 2020 at 10:00 am
  - Dec. 2, 2020 at 5:00 pm
  - Both meetings were in English and Spanish
- Questions????

**BOARD RECOGNITION FORM  
McALLEN INDEPENDENT SCHOOL DISTRICT**

**Meeting Date (Recommended):** December 14, 2020

**Title of Recognition:** Recognition of AP Scholar, College Board Recognitions and National Merit Scholarship Program Recipients

**Person(s) Being Recognized (include names & description i.e student at X High School):**  
Students from Achieve Early College High School .

**Reason for Recognition:** Advanced Placement Scholars are high school students who have demonstrated university and college - level academic achievement on AP exams, while still in high school. This achievement is demonstrated by advanced scores on the Advanced Placement exams in 3 or more subjects. Students are able to use these academic honors on their college applications and a national acknowledgment of being an academically accomplished student and can earn the students college credit, academic scholarships and acceptance at universities. This year 280 students earned 290 Advanced Placement Recognitions: 203 AP Scholar, 35 AP Scholar with Honor, 41 AP Scholar with Distinction, 2 National AP Scholar, 4 AP Capstone Diploma's, 5 AP Seminar and Research Certificates. The National Merit Scholarship Corporation serves to recognize and honor the most academically talented students of the United States by conducting a competition for recognition and scholarship. This is the most prestigious national academic award for high school students. This year MISD has 2 National Merit Semifinalists who are competing for Finalist Status. National Merit Semifinalists will advance to finalist standing in the competition by meeting high academic standards and meeting all other requirements, the top students will be notified in February of their standing and be eligible to receive scholarships of three types. The 5 National Merit Commended Students are recognized for the exceptional academic promise demonstrated by their performance on the PSAT/NMSQT- they can include this prestigious honor on college applications to distinguish themselves in the college application process. College Board National Recognition Programs grant students academic honors that can be included on college applications. Colleges use these honors to identify students from underrepresented groups who have excelled on their PSAT/NMSQT and in their classrooms. The two programs bestowing honors are African American Recognition (1 student) and Hispanic Recognition (10 students). Congratulations to the all these students who have earned these prestigious national academic honors.

Please note any items that will be presented: Powerpoint presentation by Campus

**Photographer Requested:** Yes

**AV needs:** None

Name of Presenter: Karen Nitsch  
Phone: 956.618.6059  
eMail:karen.nitsch@mcallenisd.net

**Approved for Recognition:** \_\_\_\_\_



**Superintendent** Dec 8, 2020

**PROCEDURE FOR BOARD RECOGNITION**

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

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

**BOARD RECOGNITION FORM  
McALLEN INDEPENDENT SCHOOL DISTRICT**

**Meeting Date (Recommended):** December 14, 2020

**Title of Recognition:**

**Photographer Requested:** Yes

**AV needs:**

**Approved for Recognition:** \_\_\_\_\_



**Superintendent**

**PROCEDURE FOR BOARD RECOGNITION**

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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:** December 14, 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 Replacements (11)  
Brown MS A/C Upgrades  
McAllen HS HVAC Upgrades  
Lamar Academy, Brown MS & Alvarez ES Restroom Partition Replacements and Painting  
Achieve Early College Re-Roof and HVAC Upgrades  
Science Lab Upgrades (15)  
Perez ES Playscape  
Auditorium Painting Completed-Memorial HS, Rowe HS

**Project In Progress:** Agricultural Learning Center  
Lamar Academy - New Nurse Office Area  
McAuliffe ES - Front Office Remodel  
McHigh Baseball Fence  
Bottle Water Filling Stations  
Memorial HS Ag Welding Shop  
Staff Development Portable  
Fire Alarm Replacements(6)-Cathy MS, Crockett, Navarro ES, Castaneda ES, Travis MS, Jackson ES

**Upcoming Projects:** Lamar RR Partitions Ph II  
Culinary Arts Lab  
Memorial Tennis Courts  
McHigh Door Replacements  
Intercom Replacements (6)  
Memorial Roof  
McHigh HVAC Upgrades Ph II  
Houston ES Playground Upgrades  
HVAC DW Upgrades

Hidalgo County WIFI Project at Blanca E. Sanchez ES  
Air Purification Systems

Submitted/Completed Workorders: November 845/1,406

**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 (Dec 9, 2020 18:01 CST)

For further information contact:  
Name: Ruben Trevino  
Office: (956) 632-3200  
eMail: [ruben.trevino@mcallenisd.net](mailto:ruben.trevino@mcallenisd.net)

**Approved for presentation to the Board of Education:**  
  
\_\_\_\_\_  
21  
**Superintendent of Schools**

# Report Regarding



# Facilities Maintenance & Operations Projects



22

**December 14, 2020**

# Report Regarding Facilities Maintenance & Operations Projects

## Completed Projects:

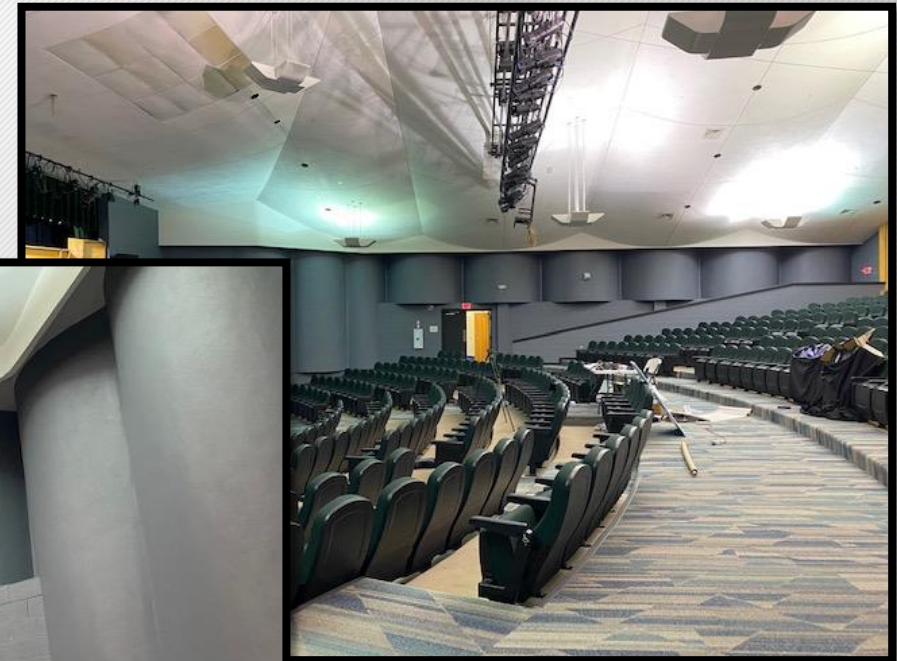
- **CNP Serving Line Replacements (11)**
- **Brown MS A/C Upgrades**
- **McAllen HS HVAC Upgrades**
- **Lamar, Brown, & Alvarez Restroom Partition Replacements and Painting**
- **Achieve Early College Re-Roof and HVAC Upgrades**
- **Science Lab Upgrades (15)**
- **Perez ES Playscape**



# Report Regarding Facilities Maintenance & Operations Projects

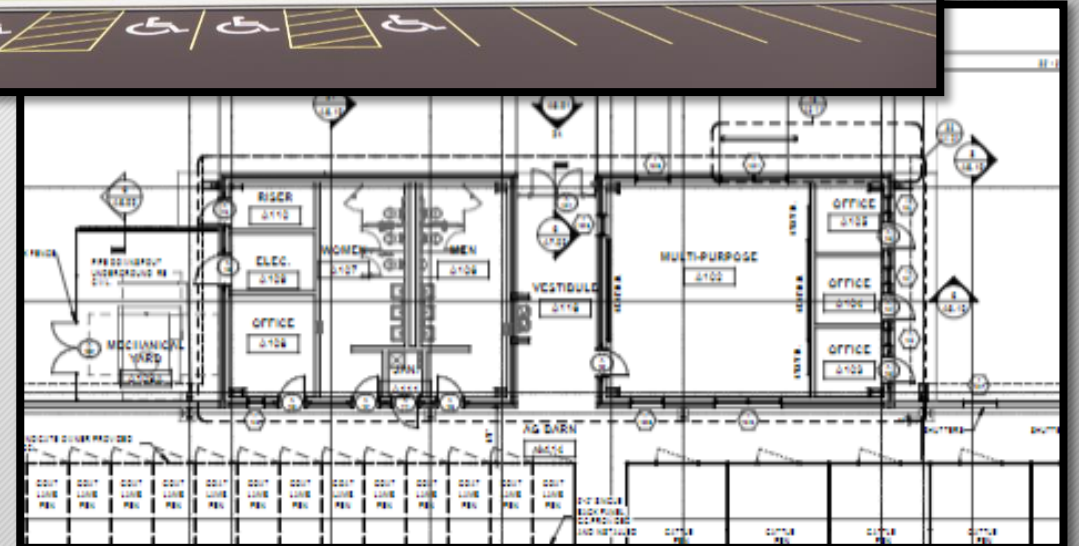
## Auditorium Painting Completed

- **Memorial HS**
- **Rowe HS**



# Report Regarding Facilities Maintenance & Operations Projects

## Agricultural Learning Center In Progress



# Report Regarding Facilities Maintenance & Operations Projects

## Project In Progress

### Lamar Academy New Nurse's Office Area



# Report Regarding Facilities Maintenance & Operations Projects

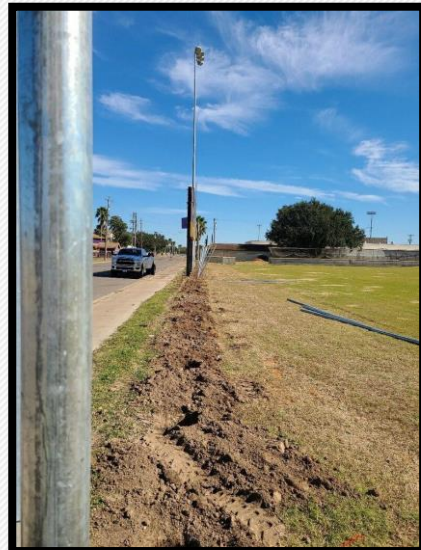
## McAuliffe Front Office Remodel In Progress



# Report Regarding Facilities Maintenance & Operations Projects

## Projects In Progress

- **McHi Baseball Fence**
- **Bottle Water Filling Stations**
- **Memorial HS Ag Welding Shop**



# Report Regarding Facilities Maintenance & Operations Projects

## Staff Development Portable Remodel In Progress



# **Report Regarding Facilities Maintenance & Operations Projects**

## **Fire Alarm Replacements (6)**

- **Cathey MS**
- **Crockett**
- **Navarro ES**
- **Castaneda ES**
- **Travis MS**
- **Jackson ES**

30

# **Report Regarding Facilities Maintenance & Operations Projects**

## **Upcoming Projects:**

- **Lamar RR Partitions Ph II**
- **Culinary Arts Lab**
- **Memorial Tennis Courts**
- **McHi Door Replacements**
- **Intercom Replacements (9)**
- **Memorial Roof**
- **McHi HVAC Upgrades Ph II**
- **Houston ES Playground Upgrades**
- **HVAC DW Upgrades**

# Report Regarding Facilities Maintenance & Operations Projects

## Hidalgo County WiFi Project at Blanca E. Sanchez ES



# Report Regarding Facilities Maintenance & Operations Projects



## Air Purification Systems



# Report Regarding Facilities Maintenance & Operations Projects



**Work Orders  
Submitted/Completed**

**November**

**845 / 1,406**



# Report Regarding Facilities Maintenance & Operations Projects



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** *Adel Filio*

**SUPERVISOR:** *Cynthia Medrano-Richards*

**Approved for presentation to the Board of Education:**

*J. Alexander*

**36** \_\_\_\_\_  
**Superintendent of Schools**



# Report Regarding ADA Hold Harmless



# Will there be an ADA Hold Harmless for the 2020-2021 school year?

Yes, TEA will institute the ADA hold harmless for the first two six-week attendance reporting periods as follows: if an LEA's Refined ADA counts during those first two six-week reporting periods are less than the ADA hold harmless projections, the first two six-week attendance reporting periods for 2020-2021 will be excluded from the calculation of ADA and student FTEs for FSP funding purposes and will be replaced with the ADA hold harmless projections. For purposes of the hold harmless calculation, TEA will not consider each six weeks attendance period independent of each other. The ADA hold harmless acts as a funding floor, guaranteeing a minimum amount of ADA that will be counted for funding purposes. Projected ADA and student FTE numbers are calculated using a three-year average trend of final numbers from the 2017-2018 through the 2019-2020 school years.



1<sup>st</sup> & 2<sup>nd</sup> Six Weeks TEA ADA Hold Harmless: 20,142.057



# Can the ADA Hold Harmless be extended beyond the first two six weeks attendance reporting periods?

Yes. The ADA hold harmless methodology will be identical to the methodology used for the first two six weeks attendance reporting periods, except that the third six weeks will be examined independent of the first two six weeks attendance reporting periods.

3<sup>rd</sup> Six Weeks TEA ADA Hold Harmless: 20,142.057

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<https://tea.texas.gov/>



# Attestation Statement For ADA Hold Harmless Beyond The First Two Six-week Reporting Periods



## ATTESTATION STATEMENT FOR ADA HOLD HARMLESS BEYOND THE FIRST TWO SIX-WEEK REPORTING PERIODS

### SECTION I: Information

TEA has instituted the ADA hold harmless for the first two six-week attendance reporting periods. TEA will make available an ADA hold harmless for the third six-weeks attendance reporting period on the condition that LEAs allow on-campus instruction throughout the entire third six-weeks period. The ADA hold harmless methodology will be identical to the methodology used for the first two six-weeks attendance reporting periods, except that the third six-weeks will be examined independent of the first two six-weeks attendance reporting periods. Specifically, if an LEA's refined ADA counts during the third six-weeks attendance reporting periods are less than the ADA hold harmless projections, the third six-weeks attendance reporting periods for 2020–2021 will be excluded from the calculation of ADA and student FTEs for FSP funding purposes and will be replaced with the ADA hold harmless projections.

School systems are eligible for this hold harmless on the condition that all families who want their children to attend on campus within the LEA have the ability to do so each day that instruction is offered, subject to two exceptions. One exception is for students attending high school less than daily in districts that have been approved to offer a hybrid-only high school instructional setting, per the requirements described in question 11 in the Hybrid Attendance Requirements section of the [SY 2020-21 Attendance and Enrollment FAQ](#) document. The other exception is for school systems that choose to temporarily limit on-campus access for up to 5 days, due to a confirmed COVID-19 case on campus, per the requirements described in questions 12-14 in the Closure section of the [SY 2020-21 Attendance and Enrollment FAQ](#) document.

School systems that wish to receive this hold harmless must submit this attestation indicating that they will meet these on-campus instruction requirements for the entirety of the third six-weeks attendance reporting period. School systems that cannot meet these conditions will not be eligible for the hold harmless.

### SECTION II: On-Campus Instruction Requirements

Will all students, should they so choose, be allowed to come on campus for instruction each day that instruction is offered for the entirety of the third six-weeks attendance reporting period subject to the two exceptions detailed above? Yes

Will students who chose to attend on-campus instruction receive instructional support in the classroom from staff who have the capacity and expertise to provide academic support specific to the student's grade level and content area? Yes

### SECTION III: Signature

LEA Name	Superintendent Name
McAllen Independent School District	Jose A. Gonzalez, Ed. D.
Date	Superintendent Signature
November 17, 2020	
I, the superintendent of schools, attest that the district will comply with the requirements of attestation for the entirety of the third six-weeks reporting period.	

Submit completed attestation forms to: [waivers@tea.texas.gov](mailto:waivers@tea.texas.gov)

**Due No Later Than May 1, 2021**



<https://tea.texas.gov/>





# Can the ADA hold harmless be extended beyond the first semester attendance reporting periods?

- ADA hold harmless placed by Texas Education Agency is currently not extended beyond the third six weeks (first semester).
- District's actual ADA for the second semester will be used to calculate state funding.



# 2020-2021 Refined ADA and Hold Harmless

1st Six Weeks Refined ADA	20,244.60
2nd Six Weeks Refined ADA	<u>20,146.30</u>
Average 1 <sup>st</sup> & 2 <sup>nd</sup> SW Refined ADA	20,195.45
TEA ADA Hold Harmless	20,142.057
Average 1 <sup>st</sup> & 2 <sup>nd</sup> SW Refined ADA	20,195.45
TEA ADA Hold Harmless	<u>20,142.057</u>
Increased/ (Decreased)	00053.393



# 2020-2021 Refined ADA and Original Budget

Average 1st & 2nd SW Refined ADA	20,195.45
Original Budget (OB)	<u>20,145.72</u>
Increased/ (Decreased)	49.73

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** 

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



44 \_\_\_\_\_  
**Superintendent of Schools**

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

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
	APPROVED BUDGET 2019-20 10/31/19	YTD ACTUAL 07/01/19 TO 10/31/19	APPROVED BUDGET 2020-21 10/31/20	YTD ACTUAL 07/01/20 TO 10/31/20	DIFFERENCE C - D	OUTSTANDING ENCUMBRANCES 11/01/20 TO 06/30/21	YTD REVENUES, EXPENSES AND ENCUMBRANCES D + F	BUDGET LESS EXPENSES AND ENCUMBRANCES C - G
<b>REVENUES:</b>								
LOCAL AND INTERMEDIATE SOURCES	\$5,075,963	\$1,936,069	\$4,436,589	\$739,739	\$3,696,850		\$739,739	\$3,696,850
PROPERTY TAXES	80,312,155	2,856,250	79,823,682	2,603,578	77,220,104		2,603,578	77,220,104
STATE PROGRAM REVENUES	141,082,125	59,579,191	137,774,797	57,389,957	80,384,840		57,389,957	80,384,840
FEDERAL PROGRAM REVENUES	20,085,258	3,512,135	21,266,401	5,109,584	16,156,817		5,109,584	16,156,817
OTHER RESOURCES/NON-OPERATING REVENUES	4,730,112	579,803	4,296,271	4,219,415	76,856		4,219,415	76,856
<b>SUB TOTAL</b>	<b>\$251,285,613</b>	<b>\$68,463,448</b>	<b>\$247,597,740</b>	<b>\$70,062,273</b>	<b>\$177,535,467</b>		<b>\$70,062,273</b>	<b>\$177,535,467</b>
<b>EXPENDITURES:</b>								
11 INSTRUCTION	\$139,147,136	\$36,701,099	\$130,752,455	\$39,948,533	\$90,803,922	\$75,155,875	\$115,104,408	\$15,648,047
12 INST. RES. & MEDIA SERVICES	3,672,017	1,124,252	3,610,620	1,218,225	2,392,395	1,997,159	3,215,384	395,236
13 CURRICULUM DEV. & INST. STAFF DEV.	4,448,933	1,144,401	4,994,649	1,396,802	3,597,847	1,913,738	3,310,540	1,684,109
21 INST. LEADERSHIP	3,379,494	854,338	3,308,772	868,496	2,440,276	1,607,071	2,475,567	833,205
23 SCHOOL LEADERSHIP	13,460,142	4,485,339	13,814,545	4,668,727	9,145,818	7,997,090	12,665,817	1,148,728
31 GUID., COUNSELING & EVAL. SER.	10,243,762	2,857,314	9,971,044	3,002,222	6,968,822	5,686,697	8,688,919	1,282,125
32 SOCIAL WORK SERVICES	1,478,552	471,286	1,943,243	615,009	1,328,234	1,146,654	1,761,662	181,581
33 HEALTH SERVICES	3,111,664	895,915	3,110,971	935,994	2,174,977	1,856,564	2,792,558	318,413
34 STUDENT (PUPIL) TRANS.	5,021,596	1,023,242	4,819,124	1,176,020	3,643,104	2,202,494	3,378,515	1,440,609
35 FOOD SERVICES	17,603,623	4,310,556	19,276,464	6,201,702	13,074,762	7,193,239	13,394,940	5,881,524
36 CURRICULAR/EXTRACURRICULAR ACT.	10,084,664	2,807,294	9,992,384	2,192,725	7,799,659	3,318,663	5,511,388	4,480,996
41 GENERAL ADMINISTRATION	7,964,121	2,627,815	8,690,663	2,661,575	6,029,088	3,942,096	6,603,671	2,086,992
51 PLANT MAINT. & OPERATIONS	21,359,709	7,109,419	22,064,716	6,523,070	15,541,646	8,103,079	14,626,149	7,438,567
52 SECURITY AND MONITORING SERV.	4,724,385	1,421,034	4,985,937	1,355,422	3,630,516	2,518,122	3,873,544	1,112,393
53 DATA PROCESSING SERVICES	5,960,564	1,406,585	6,536,003	1,818,940	4,717,063	2,322,351	4,141,291	2,394,712
61 COMMUNITY SERVICES	42,109	10,686	42,286	10,708	31,578	27,720	38,428	3,858
71 DEBT SERVICE	6,727,335	668,246	7,078,589	2,310,574	4,768,015	0	2,310,574	4,768,015
81 FAC. ACQUISITION & CONST.	8,495,472	2,757,003	796,574	315,508	481,066	80,866	396,374	400,200
95 PMT. TO JUV. JUSTICE ALT. ED. PRG.	40,000	20,000	40,000	20,000	20,000	0	20,000	20,000
99 OTHER INTERGOVERNMENTAL CHARGES	839,000	408,952	891,975	440,144	451,831	445,634	885,778	6,197
00 OTHER USES/NON-OPERATING EXPENSES	0	0	2,285,330	\$500,000	1,785,330	0	500,000	1,785,330
<b>SUB TOTAL</b>	<b>\$267,804,278</b>	<b>\$73,104,776</b>	<b>\$259,006,344</b>	<b>\$78,180,395</b>	<b>\$180,825,949</b>	<b>\$127,515,113</b>	<b>\$205,695,508</b>	<b>\$53,310,836</b>
REVENUES OVER (UNDER) EXPENDITURES		(\$4,641,328)		(\$8,118,122)				
PRELIMINARY BEGINNING FUND BALANCE		98,070,422		98,283,927				
PRELIMINARY ENDING FUND BALANCE		<u>\$93,429,094</u>		<u>\$90,165,805</u>				
PRELIMINARY OPTIMUM FUND BALANCE FOR UNFORESEEN EVENTS		\$83,408,833		\$84,895,186				



**Monthly Investment Report**  
**October 31, 2020**

PATTERSON & ASSOCIATES



INVESTMENT PROFESSIONALS

# Hold On, Here Comes November...

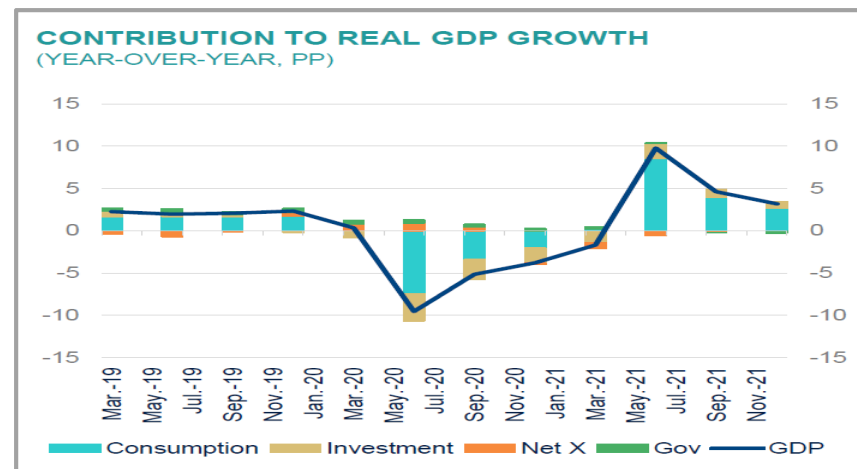
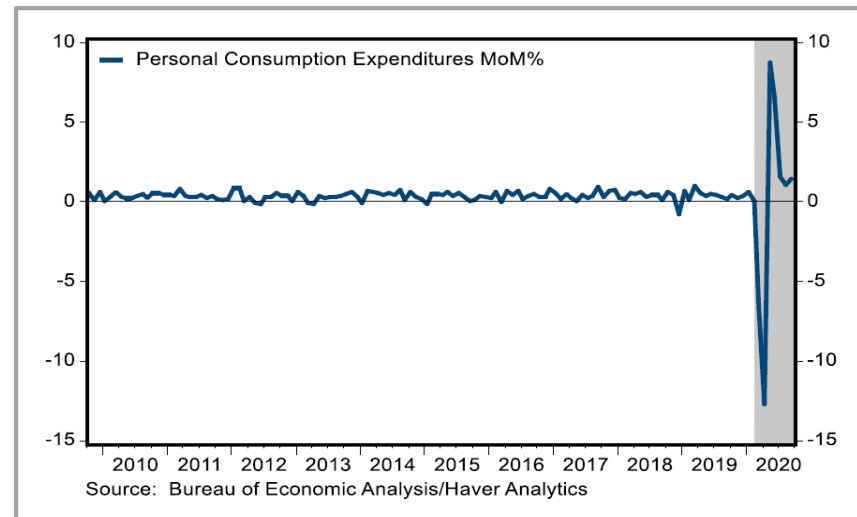
As October closes it is difficult to not cheer. A resurgence of coronavirus infections and a failed attempt to settle on the much needed next stimulus package during a highly contentious election season weighed heavily on investors worldwide.

Due to record high insolvencies and debt defaults which rival the 2009 levels, national debts around the world have risen dramatically. Switzerland's debt to GDP is 48.8% and France and the UK are 118.7% and 108% respectively. Globally, S&P Global projects a jump to 265% this year! Not only is Covid staying around for awhile but the resulting debt will remain probably for decades.

The pandemic and the election surely add noise to the short-term outlook but medium term prospects are definitely improving. The indices are all up on:

- ▀ Consumer spending,
- ▀ Personal income
- ▀ Personal, goods and services consumption
- ▀ Gross private investment
- ▀ Non-residential investment

GDP rose a record 33.1% in the third quarter. With this kind of momentum, deflation risks are surely giving way to potential upside in the medium term. But, this does follow a record drop in the second quarter which reflects a major jump from the non-activity of Q2. It will all come down to the virus as #1 risk. Resurgence of the virus could put the GDP on a very volatile quarterly risk path. Without the new stimulus package GDP could fall back. Consumers riding this tide will continue to move from savings to immediate consumption mode again.





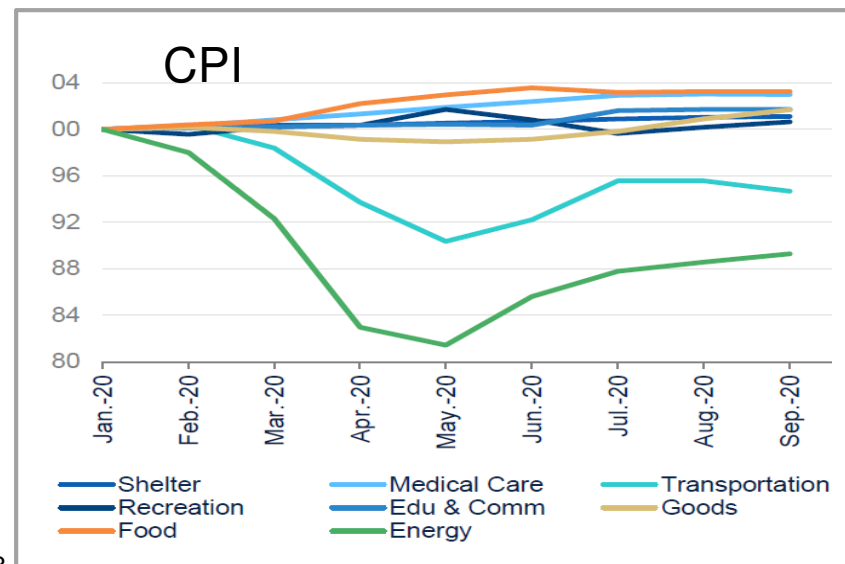
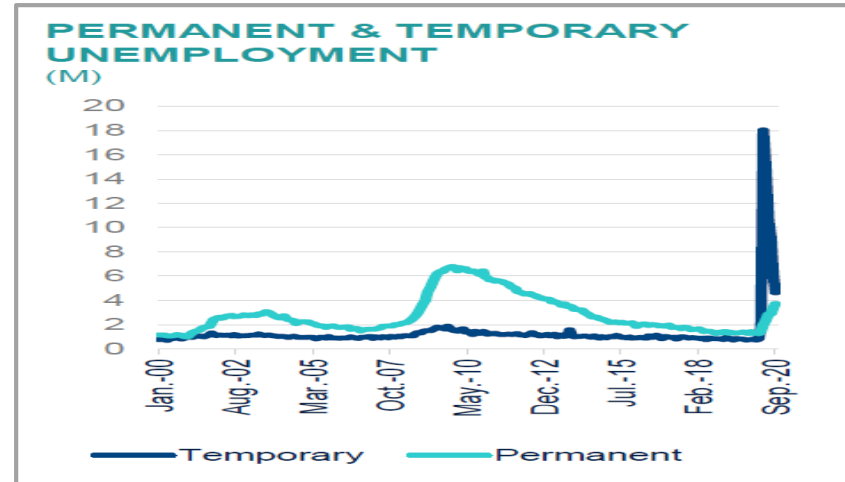
# Financial Tensions Remain

Financial tensions are broadly stable – at least temporarily - around the world but certainly have not disappeared. Tied to this are major domestic conflicts both here in the US and in several hot spots.

The contentious nature of negotiations on the next stimulus program was a major drag on not only people in need of relief but on all the markets. Again another *will they- won't they politically motivated delay* in Washington.

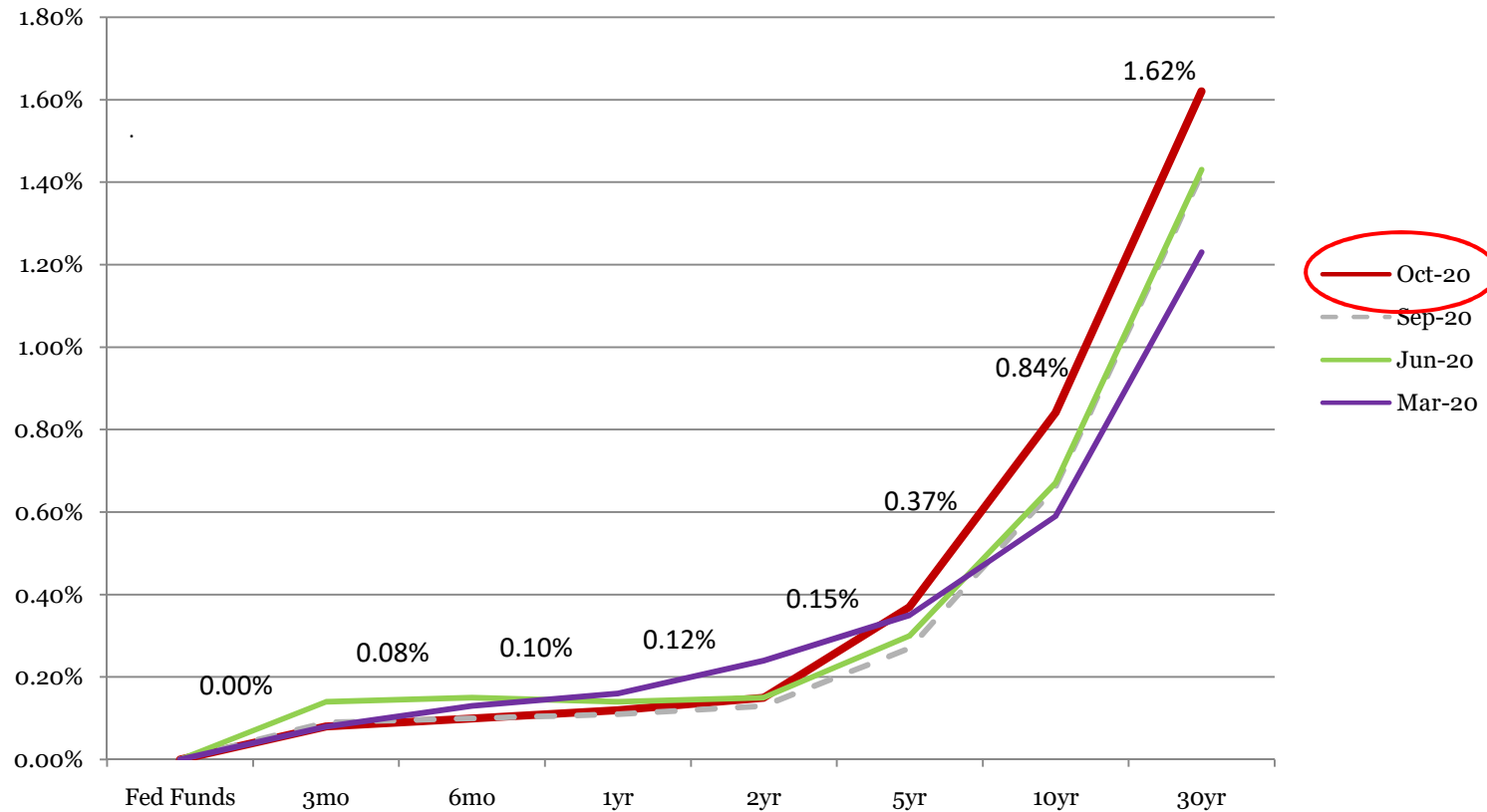
The epidemiological context and the geopolitical tensions worldwide are fueling a global risk aversion. This drives volatility on news blips in the markets as well as a general investor goal of safety and short term investments – which of course lower our US rates. This will undoubtedly calm slightly when a vaccine or treatment is achieved but there is no real timeline for that occurrence.

What may also change is the job situation. Workers may have to adjust to a new pandemic reality which could bring a rise in permanent unemployment. There is tremendous ground to recapture on jobs even though continuing jobless claims are trending down. Jobless claims appear to be staying below 1 million on a weekly basis and the participation rate on jobs has been rising. However, as business adapts to at-home work and service jobs continue to evolve as business automates, this lessened need for jobs may be more than a temporary change.



# Range Bound

- The curve continues to fight the virus and during October the upcoming election drove investors to safety. The long end of the curve rose slightly but the short and medium terms sank.
- Market fears and volatility have caused Treasury and agency rates to remain at the lower (dismal) levels seen for the last eight months.
- The Fed has stated its intention to stay at 0.0% Fed Funds through 2022.
- The absence of agreement on the next stimulus package remains a major drag on all markets.



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

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

<b>Portfolio as of 09/30/20:</b>		<b>Portfolio as of 10/31/20:</b>	
Beginning Book Value	\$ 130,384,897	Ending Book Value	\$ 130,683,178
Beginning Market Value	\$ 130,432,240	Ending Market Value	\$ 130,720,660
		Unrealized Gain/Loss	\$ 37,482
WAM at Beginning Period Date <sup>1</sup>	38 days	WAM at Ending Period Date <sup>1</sup>	57 days
<i>(Increase in market value is due to seasonal cash inflows)</i>		Change in Market Value <sup>2</sup>	\$ 288,420
<b>Average Yield to Maturity for period</b>		<b>0.283%</b>	
<b>Average Yield 180-Day Treasury Bill for period</b>		<b>0.110%</b>	

*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

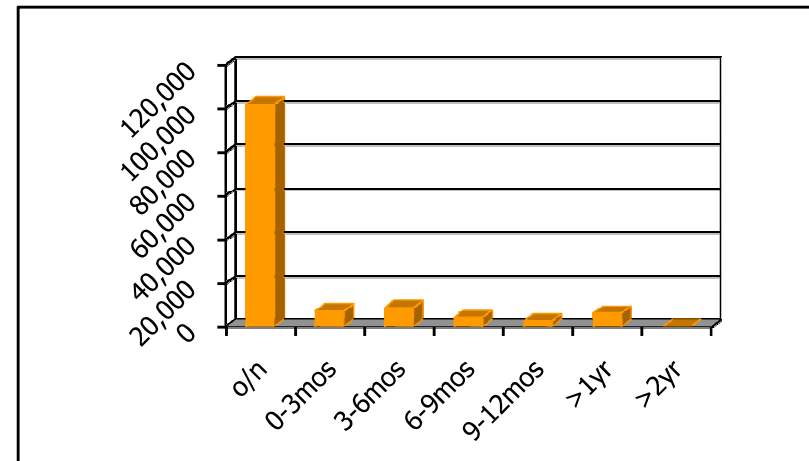
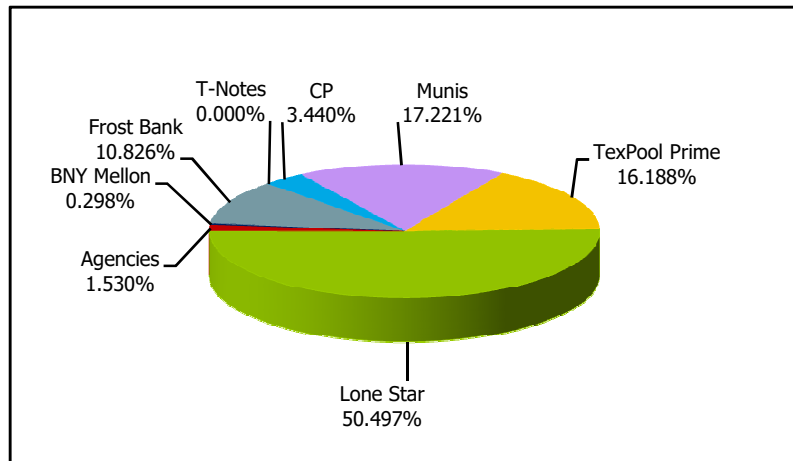
<sup>1</sup> WAM – weighted average maturity

<sup>2</sup> “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 October 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 0.85%.





**McAllen ISD  
Portfolio Management  
Portfolio Summary  
October 31, 2020**

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

<b>Investments</b>	<b>Par Value</b>	<b>Market Value</b>	<b>Book Value</b>	<b>% of Portfolio</b>	<b>Term</b>	<b>Days to Maturity</b>	<b>YTM 365 Equiv.</b>
BNY Mellon	389,953.71	389,953.71	389,953.71	0.30	1	1	0.000
Frost Bank	14,148,379.89	14,148,379.89	14,148,379.89	10.83	1	1	0.010
Commercial Paper Disc. - Amortizing	4,500,000.00	4,495,200.00	4,495,200.00	3.44	180	80	0.488
Federal Agency Coupon Securities	2,000,000.00	1,999,798.88	1,998,907.56	1.53	727	627	0.258
Municipal Bonds	22,268,000.00	22,542,047.35	22,505,456.98	17.22	400	254	0.971
Texpool/Texpool Prime	21,155,353.94	21,155,353.94	21,155,353.94	16.19	1	1	0.181
Lone Star	65,989,925.82	65,989,925.82	65,989,925.82	50.50	1	1	0.127
	<b>130,451,613.36</b>	<b>130,720,659.59</b>	<b>130,683,177.90</b>	<b>100.00%</b>	<b>87</b>	<b>57</b>	<b>0.283</b>
<b>Investments</b>							
<b>Cash and Accrued Interest</b>							
Accrued Interest at Purchase		24,565.56	24,565.56				
Subtotal		24,565.56	24,565.56				
<b>Total Cash and Investments</b>	<b>130,451,613.36</b>	<b>130,745,225.15</b>	<b>130,707,743.46</b>		<b>87</b>	<b>57</b>	<b>0.283</b>

<b>Total Earnings</b>	<b>October 31 Month Ending</b>	<b>Fiscal Year To Date</b>
Current Year	29,922.02	161,440.88

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.

Nov 20, 2020

Adelita Felix, Chief Financial Officer



**McAllen ISD**  
**Summary by Type**  
**October 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
<b>Fund: Activity Fund</b>						
Frost Bank	1	1,569,252.97	1,569,252.97	1.20	0.010	1
<b>Subtotal</b>	<b>1</b>	<b>1,569,252.97</b>	<b>1,569,252.97</b>	<b>1.20</b>	<b>0.010</b>	<b>1</b>
<b>Fund: Clearing Fund</b>						
Frost Bank	1	4,475,472.07	4,475,472.07	3.42	0.010	1
<b>Subtotal</b>	<b>1</b>	<b>4,475,472.07</b>	<b>4,475,472.07</b>	<b>3.42</b>	<b>0.010</b>	<b>1</b>
<b>Fund: Capital Projects Fund</b>						
Municipal Bonds	2	5,728,000.00	5,793,093.54	4.43	1.157	199
Frost Bank	2	1,167,829.56	1,167,829.56	0.89	0.010	1
Lone Star	4	21,470,139.16	21,470,139.16	16.43	0.115	1
<b>Subtotal</b>	<b>8</b>	<b>28,365,968.72</b>	<b>28,431,062.26</b>	<b>21.75</b>	<b>0.323</b>	<b>41</b>
<b>Fund: Debt Service Fund</b>						
Frost Bank	1	3,090.66	3,090.66	0.00	0.010	1
Lone Star	2	910,593.82	910,593.82	0.70	0.118	1
<b>Subtotal</b>	<b>3</b>	<b>913,684.48</b>	<b>913,684.48</b>	<b>0.70</b>	<b>0.117</b>	<b>1</b>
<b>Fund: General Fund</b>						
Commercial Paper Disc. -Amortizing	1	2,000,000.00	1,997,866.67	1.53	0.488	80
Frost Bank	1	6,215,550.46	6,215,550.46	4.76	0.010	1
Lone Star	3	34,706,674.02	34,706,674.02	26.56	0.136	1
Municipal Bonds	4	11,170,000.00	11,278,682.00	8.63	0.748	226
Texpool/Texpool Prime	2	21,155,353.94	21,155,353.94	16.19	0.181	1
<b>Subtotal</b>	<b>11</b>	<b>75,247,578.42</b>	<b>75,354,127.09</b>	<b>57.67</b>	<b>0.239</b>	<b>37</b>
<b>Fund: Plan 457 Fund</b>						
Frost Bank	1	20,321.05	20,321.05	0.02	0.010	1
<b>Subtotal</b>	<b>1</b>	<b>20,321.05</b>	<b>20,321.05</b>	<b>0.02</b>	<b>0.010</b>	<b>1</b>
<b>Fund: Proprietary Fund</b>						

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

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
<b>Fund: Proprietary Fund</b>						
Frost Bank	1	696,863.12	696,863.12	0.53	0.010	1
Lone Star	2	8,902,518.82	8,902,518.82	6.81	0.121	1
<b>Subtotal</b>	<b>3</b>	<b>9,599,381.94</b>	<b>9,599,381.94</b>	<b>7.34</b>	<b>0.113</b>	<b>1</b>
<b>Fund: QSCB - Reserve Fund</b>						
Commercial Paper Disc. -Amortizing	1	2,500,000.00	2,497,333.33	1.91	0.488	80
BNY Mellon	1	389,953.71	389,953.71	0.30	0.000	1
Federal Agency Coupon Securities	1	2,000,000.00	1,998,907.56	1.53	0.258	627
Municipal Bonds	3	5,370,000.00	5,433,681.44	4.16	1.238	369
<b>Subtotal</b>	<b>6</b>	<b>10,259,953.71</b>	<b>10,319,876.04</b>	<b>7.90</b>	<b>0.820</b>	<b>335</b>
<b>Fund: QSCB - Debt Service</b>						
BNY Mellon	1	0.00	0.00	0.00	0.000	0
<b>Subtotal</b>	<b>1</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.000</b>	<b>0</b>
<b>Total and Average</b>	<b>35</b>	<b>130,451,613.36</b>	<b>130,683,177.90</b>	<b>100.00</b>	<b>0.283</b>	<b>57</b>



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

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

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
<b>Frost Bank</b>										
999915	10020	Frost Bank Public Checking	07/01/2020	1,569,252.97	1,569,252.97	1,569,252.97	0.010	0.009	0.010	1
<b>Subtotal and Average</b>				<b>1,569,252.97</b>	<b>1,569,252.97</b>	<b>1,569,252.97</b>		<b>0.010</b>	<b>0.010</b>	<b>1</b>
<b>Total Investments and Average</b>				<b>1,569,252.97</b>	<b>1,569,252.97</b>	<b>1,569,252.97</b>		<b>0.010</b>	<b>0.010</b>	<b>1</b>

**Fund CLEAR - Clearing Fund  
Investments by Fund  
October 31, 2020**

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
<b>Frost Bank</b>										
999914	10019	Frost Bank Public Checking	07/01/2020	4,475,472.07	4,475,472.07	4,475,472.07	0.010	0.009	0.010	1
<b>Subtotal and Average</b>				<b>4,475,472.07</b>	<b>4,475,472.07</b>	<b>4,475,472.07</b>		<b>0.010</b>	<b>0.010</b>	<b>1</b>
<b>Total Investments and Average</b>				<b>4,475,472.07</b>	<b>4,475,472.07</b>	<b>4,475,472.07</b>		<b>0.010</b>	<b>0.010</b>	<b>1</b>

**Fund CP - Capital Projects Fund  
Investments by Fund  
October 31, 2020**

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
<b>Frost Bank</b>											
999922	10103	Frost Bank Public Checking	07/01/2020	800,014.68	800,014.68	800,014.68	0.010	0.009	0.010		1
SYS10109	10109	Frost Bank Public Checking	07/01/2020	367,814.88	367,814.88	367,814.88	0.010	0.009	0.010		1
<b>Subtotal and Average</b>				<b>1,167,829.56</b>	<b>1,167,829.56</b>	<b>1,167,829.56</b>		<b>0.010</b>	<b>0.010</b>		<b>1</b>
<b>Municipal Bonds</b>											
114727VW7	10118	Broome County NY	04/30/2020	3,426,378.56	3,418,000.00	3,430,817.50	1.750	1.233	1.250	04/30/2021	180
95639PBF9	10116	West Virginia State Eco Dev	04/28/2020	2,366,714.98	2,310,000.00	2,373,039.90	5.000	1.006	1.020	06/15/2021	226
<b>Subtotal and Average</b>				<b>5,793,093.54</b>	<b>5,728,000.00</b>	<b>5,803,857.40</b>		<b>1.141</b>	<b>1.157</b>		<b>198</b>
<b>Lone Star</b>											
108906G	10101	Lone Star Corporate Overnight	12/18/2019	2,251,277.26	2,251,277.26	2,251,277.26	0.150	0.147	0.150		1
108906I	10108	Lone Star Corporate Overnight	02/21/2020	8,484,601.87	8,484,601.87	8,484,601.87	0.150	0.147	0.150		1
108906H	10102	Lone Star Government ON	12/18/2019	2,250,956.14	2,250,956.14	2,250,956.14	0.080	0.078	0.080		1
108906J	10113	Lone Star Government ON	03/12/2020	8,483,303.89	8,483,303.89	8,483,303.89	0.080	0.078	0.080		1
<b>Subtotal and Average</b>				<b>21,470,139.16</b>	<b>21,470,139.16</b>	<b>21,470,139.16</b>		<b>0.113</b>	<b>0.115</b>		<b>1</b>
<b>Total Investments and Average</b>				<b>28,431,062.26</b>	<b>28,365,968.72</b>	<b>28,441,826.12</b>		<b>0.319</b>	<b>0.323</b>		<b>41</b>

**Fund DS - Debt Service Fund  
Investments by Fund  
October 31, 2020**

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
<b>Frost Bank</b>										
999918	10023	Frost Bank Public Checking	07/01/2020	3,090.66	3,090.66	3,090.66	0.010	0.009	0.010	1
<b>Subtotal and Average</b>				<b>3,090.66</b>	<b>3,090.66</b>	<b>3,090.66</b>		<b>0.010</b>	<b>0.010</b>	<b>1</b>
<b>Lone Star</b>										
108906B	10032	Lone Star Corporate Overnight	10/22/2015	488,154.20	488,154.20	488,154.20	0.150	0.147	0.150	1
108906C	10089	Lone Star Government ON	08/05/2019	422,439.62	422,439.62	422,439.62	0.080	0.078	0.080	1
<b>Subtotal and Average</b>				<b>910,593.82</b>	<b>910,593.82</b>	<b>910,593.82</b>		<b>0.116</b>	<b>0.118</b>	<b>1</b>
<b>Total Investments and Average</b>				<b>913,684.48</b>	<b>913,684.48</b>	<b>913,684.48</b>		<b>0.116</b>	<b>0.117</b>	<b>1</b>

**Fund GEN - General Fund  
Investments by Fund  
October 31, 2020**

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
<b>Frost Bank</b>											
999917	10022	Frost Bank Public Checking	07/01/2020	6,215,550.46	6,215,550.46	6,215,550.46	0.010	0.009	0.010		1
<b>Subtotal and Average</b>				<b>6,215,550.46</b>	<b>6,215,550.46</b>	<b>6,215,550.46</b>		<b>0.010</b>	<b>0.010</b>		<b>1</b>
<b>Commercial Paper Disc. -Amortizing</b>											
05990CNL4	10120	Banco Credito MIA CP	07/24/2020	1,997,866.67	2,000,000.00	1,997,866.67		0.481	0.487	01/20/2021	80
<b>Subtotal and Average</b>				<b>1,997,866.67</b>	<b>2,000,000.00</b>	<b>1,997,866.67</b>		<b>0.481</b>	<b>0.488</b>		<b>80</b>
<b>Municipal Bonds</b>											
096575KZ7	10125	Boces NY Sole Supervisory	10/29/2020	4,017,840.66	4,000,000.00	4,017,360.00	1.250	0.346	0.351	04/30/2021	180
235036YT1	10114	DFW Int'l Airport Rev	04/07/2020	2,795,000.00	2,795,000.00	2,795,000.00	5.000	1.382	1.401	11/01/2020	0
64971WJ35	10123	NYC Trans Finance Auth	10/13/2020	2,544,806.45	2,500,000.00	2,545,975.00	1.650	0.443	0.449	05/01/2022	546
95639PBF9	10117	West Virginia State Eco Dev	04/28/2020	1,921,034.89	1,875,000.00	1,926,168.75	5.000	1.006	1.020	06/15/2021	226
<b>Subtotal and Average</b>				<b>11,278,682.00</b>	<b>11,170,000.00</b>	<b>11,284,503.75</b>		<b>0.737</b>	<b>0.748</b>		<b>225</b>
<b>Texpool/Texpool Prime</b>											
999921	10092	Texpool	08/05/2019	10,556,752.57	10,556,752.57	10,556,752.57	0.134	0.131	0.133		1
999920	10034	Texpool Prime	11/03/2015	10,598,601.37	10,598,601.37	10,598,601.37	0.228	0.224	0.228		1
<b>Subtotal and Average</b>				<b>21,155,353.94</b>	<b>21,155,353.94</b>	<b>21,155,353.94</b>		<b>0.178</b>	<b>0.181</b>		<b>1</b>
<b>Lone Star</b>											
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	27,873,941.54	27,873,941.54	27,873,941.54	0.150	0.147	0.150		1
108906D	10090	Lone Star Government ON	08/05/2019	6,832,732.48	6,832,732.48	6,832,732.48	0.080	0.078	0.080		1
<b>Subtotal and Average</b>				<b>34,706,674.02</b>	<b>34,706,674.02</b>	<b>34,706,674.02</b>		<b>0.134</b>	<b>0.136</b>		<b>1</b>
<b>Total Investments and Average</b>				<b>75,354,127.09</b>	<b>75,247,578.42</b>	<b>75,359,948.84</b>		<b>0.236</b>	<b>0.239</b>		<b>36</b>

**Fund PLAN457 - Plan 457 Fund  
Investments by Fund  
October 31, 2020**

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
<b>Frost Bank</b>										
999916	10021	Frost Bank Public Checking	07/01/2020	20,321.05	20,321.05	20,321.05	0.010	0.009	0.010	1
<b>Subtotal and Average</b>				<b>20,321.05</b>	<b>20,321.05</b>	<b>20,321.05</b>	<b>0.010</b>	<b>0.010</b>		<b>1</b>
<b>Total Investments and Average</b>				<b>20,321.05</b>	<b>20,321.05</b>	<b>20,321.05</b>	<b>0.010</b>	<b>0.010</b>		<b>1</b>

**Fund PROP - Proprietary Fund  
Investments by Fund  
October 31, 2020**

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
<b>Frost Bank</b>										
999919	10024	Frost Bank Public Checking	07/01/2020	696,863.12	696,863.12	696,863.12	0.010	0.009	0.010	1
<b>Subtotal and Average</b>				<b>696,863.12</b>	<b>696,863.12</b>	<b>696,863.12</b>		<b>0.010</b>	<b>0.010</b>	<b>1</b>
<b>Lone Star</b>										
108906A	10025	Lone Star Corporate Overnight	08/05/2015	5,251,500.73	5,251,500.73	5,251,500.73	0.150	0.147	0.150	1
108906E	10091	Lone Star Government ON	08/05/2019	3,651,018.09	3,651,018.09	3,651,018.09	0.080	0.078	0.080	1
<b>Subtotal and Average</b>				<b>8,902,518.82</b>	<b>8,902,518.82</b>	<b>8,902,518.82</b>		<b>0.120</b>	<b>0.121</b>	<b>1</b>
<b>Total Investments and Average</b>				<b>9,599,381.94</b>	<b>9,599,381.94</b>	<b>9,599,381.94</b>		<b>0.112</b>	<b>0.113</b>	<b>1</b>

**Fund QSCB - QSCB - Reserve Fund  
Investments by Fund  
October 31, 2020**

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
<b>BNY Mellon</b>											
882521	10014	BNY Mellon - Cash	07/01/2020	389,953.71	389,953.71	389,953.71					1
<b>Subtotal and Average</b>				<b>389,953.71</b>	<b>389,953.71</b>	<b>389,953.71</b>		<b>0.000</b>	<b>0.000</b>		<b>1</b>
<b>Commercial Paper Disc. -Amortizing</b>											
05990CNL4	10121	Banco Credito MIA CP	07/24/2020	2,497,333.33	2,500,000.00	2,497,333.33	0.480	0.481	0.487	01/20/2021	80
<b>Subtotal and Average</b>				<b>2,497,333.33</b>	<b>2,500,000.00</b>	<b>2,497,333.33</b>		<b>0.481</b>	<b>0.488</b>		<b>80</b>
<b>Federal Agency Coupon Securities</b>											
3133ELW67	10122	FFCB Call Note	07/24/2020	1,998,907.56	2,000,000.00	1,999,798.88	0.220	0.254	0.257	07/21/2022	627
<b>Subtotal and Average</b>				<b>1,998,907.56</b>	<b>2,000,000.00</b>	<b>1,999,798.88</b>		<b>0.254</b>	<b>0.258</b>		<b>627</b>
<b>Municipal Bonds</b>											
64971WP38	10124	NYC Trans Finance Auth	10/13/2020	1,613,036.25	1,575,000.00	1,614,390.75	1.850	0.456	0.462	08/01/2022	638
796815ZF8	10119	San Bernardino County CA	05/27/2020	2,513,275.84	2,490,000.00	2,524,312.20	2.030	0.986	1.000	10/01/2021	334
9143013U8	10083	University of Houston	02/27/2019	1,307,369.35	1,305,000.00	1,314,983.25	3.300	2.614	2.650	02/15/2021	106
<b>Subtotal and Average</b>				<b>5,433,681.44</b>	<b>5,370,000.00</b>	<b>5,453,686.20</b>		<b>1.221</b>	<b>1.238</b>		<b>369</b>
<b>Total Investments and Average</b>				<b>10,319,876.04</b>	<b>10,259,953.71</b>	<b>10,340,772.12</b>		<b>0.808</b>	<b>0.820</b>		<b>335</b>

**Fund QSCBDS - QSCB - Debt Service  
Investments by Fund  
October 31, 2020**

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
<b>BNY Mellon</b>										
882520	10040	BNY Mellon - Cash	07/01/2020	0.00	0.00	0.00				1
<b>Subtotal and Average</b>				<b>0.00</b>	<b>0.00</b>	<b>0.00</b>		<b>0.000</b>	<b>0.000</b>	<b>0</b>
<b>Total Investments and Average</b>				<b>0.00</b>	<b>0.00</b>	<b>0.00</b>		<b>0.000</b>	<b>0.000</b>	<b>0</b>



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

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

Trans. Date	Investment #	Fund	Trans. Type	Security ID	Par Value	Security Description	Maturity Date	Purchases	Interest	Redemptions	Cash
<b>General Fund</b>											
10/13/2020	10123	GEN	Purchase	64971WJ35	2,500,000.00	NYTRAN 2.5M 1.65% Mat.	05/01/2022	-2,546,300.00	-18,562.50	0.00	-2,564,862.50
10/29/2020	10125	GEN	Purchase	096575KZ7	4,000,000.00	BOCES 4.0M 1.25% Mat. 04/30/2021	04/30/2021	-4,018,040.00	-138.89	0.00	-4,018,178.89
<b>Subtotal</b>								<b>-6,564,340.00</b>	<b>-18,701.39</b>	<b>0.00</b>	<b>-6,583,041.39</b>
<b>QSCB - Reserve Fund</b>											
10/01/2020	10119	QSCB	Interest	796815ZF8	2,490,000.00	SANBER 2.5M 2.03% Mat.	10/01/2021	0.00	25,273.50	0.00	25,273.50
10/13/2020	10124	QSCB	Purchase	64971WP38	1,575,000.00	NYTRAN 1.6M 1.85% Mat.	08/01/2022	-1,614,123.00	-5,827.50	0.00	-1,619,950.50
<b>Subtotal</b>								<b>-1,614,123.00</b>	<b>19,446.00</b>	<b>0.00</b>	<b>-1,594,677.00</b>
<b>Total</b>								<b>-8,178,463.00</b>	<b>744.61</b>	<b>0.00</b>	<b>-8,177,718.39</b>



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

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

CUSIP	Investment #	Fund	Sec. Type	Issuer	Original Par Value	Purchase Date	Payment Periods	Principal Purchased	Accrued Interest at Purchase	Rate at Purchase	Maturity Date	YTM	Ending Book Value
<b>General Fund</b>													
64971WJ35	10123	GEN	MC2	NYTRAN	2,500,000.00	10/13/2020	11/01 - 05/01	2,546,300.00	18,562.50	1.650	05/01/2022	0.450	2,544,806.45
096575KZ7	10125	GEN	MC2	BOCES	4,000,000.00	10/29/2020	04/30 - Final Pmt.	4,018,040.00	138.89	1.250	04/30/2021	0.351	4,017,840.66
				<b>Subtotal</b>	<b>6,500,000.00</b>			<b>6,564,340.00</b>	<b>18,701.39</b>				<b>6,562,647.11</b>
<b>QSCB - Reserve Fund</b>													
64971WP38	10124	QSCB	MC2	NYTRAN	1,575,000.00	10/13/2020	02/01 - 08/01	1,614,123.00	5,827.50	1.850	08/01/2022	0.463	1,613,036.25
				<b>Subtotal</b>	<b>1,575,000.00</b>			<b>1,614,123.00</b>	<b>5,827.50</b>				<b>1,613,036.25</b>
				<b>Total Purchases</b>	<b>8,075,000.00</b>			<b>8,178,463.00</b>	<b>24,528.89</b>				<b>8,175,683.36</b>



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

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

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
<b>Fund: Activity Fund</b>												
999915	10020	ACT	LA2	1,569,252.97	1,582,957.37	1,582,073.59		0.010	0.009	12.02	0.00	12.02
			<b>Subtotal</b>	<b>1,569,252.97</b>	<b>1,582,957.37</b>	<b>1,582,073.59</b>			<b>0.009</b>	<b>12.02</b>	<b>0.00</b>	<b>12.02</b>
<b>Fund: Clearing Fund</b>												
999914	10019	CLEAR	LA2	4,475,472.07	6,119,432.28	6,013,371.21		0.010	0.005	24.34	0.00	24.34
			<b>Subtotal</b>	<b>4,475,472.07</b>	<b>6,119,432.28</b>	<b>6,013,371.21</b>			<b>0.005</b>	<b>24.34</b>	<b>0.00</b>	<b>24.34</b>
<b>Fund: Capital Projects Fund</b>												
108906I	10108	CP	RR2	8,484,601.87	8,683,466.43	8,657,733.23		0.150	0.154	1,135.44	0.00	1,135.44
108906G	10101	CP	RR2	2,251,277.26	2,250,982.11	2,251,001.15		0.150	0.154	295.15	0.00	295.15
SYS10109	10109	CP	LA2	367,814.88	341,191.10	336,823.27		0.010	0.009	2.57	0.00	2.57
999922	10103	CP	LA2	800,014.68	800,008.58	800,009.23		0.010	0.009	6.10	0.00	6.10
108906J	10113	CP	RR2	8,483,303.89	8,582,710.55	8,569,845.60		0.080	0.082	593.34	0.00	593.34
108906H	10102	CP	RR2	2,250,956.14	2,250,800.30	2,250,810.35		0.080	0.082	155.84	0.00	155.84
95639PBF9	10116	CP	MC2	2,310,000.00	2,374,310.74	2,370,267.84	06/15/2021	5.000	1.008	9,625.00	-7,595.76	2,029.24
114727VW7	10118	CP	MC2	3,418,000.00	3,427,782.79	3,427,035.38	04/30/2021	1.750	1.230	4,984.58	-1,404.23	3,580.35
			<b>Subtotal</b>	<b>28,365,968.72</b>	<b>28,711,252.60</b>	<b>28,663,526.06</b>			<b>0.320</b>	<b>16,798.02</b>	<b>-8,999.99</b>	<b>7,798.03</b>
<b>Fund: Debt Service Fund</b>												
108906B	10032	DS	RR2	488,154.20	427,458.96	418,611.67		0.150	0.154	54.91	0.00	54.91
999918	10023	DS	LA2	3,090.66	698.72	882.57		0.010	0.013	0.01	0.00	0.01
108906C	10089	DS	RR2	422,439.62	423,910.31	423,283.17		0.080	0.082	29.31	0.00	29.31
			<b>Subtotal</b>	<b>913,684.48</b>	<b>852,067.99</b>	<b>842,777.41</b>			<b>0.118</b>	<b>84.23</b>	<b>0.00</b>	<b>84.23</b>
<b>Fund: General Fund</b>												
999921	10092	GEN	RRP	10,556,752.57	10,555,556.13	10,555,633.32		0.134	0.133	1,196.44	0.00	1,196.44
108906	10003	GEN	RR2	27,873,941.54	35,586,648.10	31,313,056.69		0.150	0.155	4,126.54	0.00	4,126.54
999917	10022	GEN	LA2	6,215,550.46	4,745,545.67	4,840,386.27		0.010	0.012	50.46	0.00	50.46
999920	10034	GEN	RRP	10,598,601.37	10,596,548.53	10,596,680.97		0.228	0.228	2,052.84	0.00	2,052.84

**McAllen ISD**  
**Interest Earnings**  
**October 1, 2020 - October 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
<b>Fund: General Fund</b>												
108906D	10090	GEN	RR2	6,832,732.48	6,832,259.45	6,832,289.97		0.080	0.082	473.03	0.00	473.03
05990CNL4	10120	GEN	ACP	2,000,000.00	1,997,040.00	1,997,466.67	01/20/2021		0.487	0.00	826.67	826.67
235036YT1	10114	GEN	MC2	2,795,000.00	2,803,315.12	2,798,889.33	11/01/2020	5.000	1.401	11,645.83	-8,315.12	3,330.71
95639PBF9	10117	GEN	MC2	1,875,000.00	1,927,200.28	1,923,918.70	06/15/2021	5.000	1.008	7,812.50	-6,165.39	1,647.11
64971WJ35	10123	GEN	MC2	2,500,000.00	0.00	1,560,129.61	05/01/2022	1.650	0.429	2,062.50	-1,493.55	568.95
096575KZ7	10125	GEN	MC2	4,000,000.00	0.00	388,826.50	04/30/2021	1.250	0.238	277.78	-199.34	78.44
			<b>Subtotal</b>	<b>75,247,578.42</b>	<b>75,044,113.28</b>	<b>72,807,278.03</b>			<b>0.232</b>	<b>29,697.92</b>	<b>-15,346.73</b>	<b>14,351.19</b>
<b>Fund: Plan 457 Fund</b>												
999916	10021	PLAN457	LA2	20,321.05	23,707.70	21,631.93		0.010	0.009	0.16	0.00	0.16
			<b>Subtotal</b>	<b>20,321.05</b>	<b>23,707.70</b>	<b>21,631.93</b>			<b>0.009</b>	<b>0.16</b>	<b>0.00</b>	<b>0.16</b>
<b>Fund: Proprietary Fund</b>												
108906A	10025	PROP	RR2	5,251,500.73	3,651,006.16	3,780,070.33		0.150	0.154	494.57	0.00	494.57
999919	10024	PROP	LA2	696,863.12	810,373.02	803,050.17		0.010	0.010	7.01	0.00	7.01
108906E	10091	PROP	RR2	3,651,018.09	3,650,765.33	3,650,781.64		0.080	0.082	252.76	0.00	252.76
			<b>Subtotal</b>	<b>9,599,381.94</b>	<b>8,112,144.51</b>	<b>8,233,902.13</b>			<b>0.108</b>	<b>754.34</b>	<b>0.00</b>	<b>754.34</b>
<b>Fund: QSCB - Reserve Fund</b>												
882521	10014	QSCB	LA1	389,953.71	1,620,695.06	923,112.45				0.00	0.00	0.00
3133ELW67	10122	QSCB	FAC	2,000,000.00	1,998,781.51	1,998,848.60	07/21/2022	0.220	0.290	366.66	126.05	492.71
9143013U8	10083	QSCB	MC2	1,305,000.00	1,308,052.82	1,307,689.03	02/15/2021	3.300	2.616	3,588.75	-683.47	2,905.28
05990CNL4	10121	QSCB	ACP	2,500,000.00	2,496,300.00	2,496,833.33	01/20/2021	0.480	0.487	0.00	1,033.33	1,033.33
796815ZF8	10119	QSCB	MC2	2,490,000.00	2,515,391.83	2,514,265.58	10/01/2021	2.030	0.982	4,212.25	-2,115.99	2,096.26
64971WP38	10124	QSCB	MC2	1,575,000.00	0.00	988,933.10	08/01/2022	1.850	0.441	1,456.88	-1,086.75	370.13
			<b>Subtotal</b>	<b>10,259,953.71</b>	<b>9,939,221.22</b>	<b>10,229,682.09</b>			<b>0.794</b>	<b>9,624.54</b>	<b>-2,726.83</b>	<b>6,897.71</b>
			<b>Total</b>	<b>130,451,613.36</b>	<b>130,384,896.95</b>	<b>128,394,242.46</b>			<b>0.274</b>	<b>56,995.57</b>	<b>-27,073.55</b>	<b>29,922.02</b>



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

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

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 10/01/2020	Amount Amortized This Period	Amt Amortized Through 10/31/2020	Amount Unamortized Through 10/31/2020
<b>Capital Projects Fund</b>										
10118	CP	04/30/2021	3,418,000.00	3,434,850.74	16,850.74	3,426,378.56	-7,067.95	-1,404.23	-8,472.18	8,378.56
	Broome County NY		1.750				9,782.79			
10116	CP	06/15/2021	2,310,000.00	2,413,049.10	103,049.10	2,366,714.98	-38,738.36	-7,595.76	-46,334.12	56,714.98
	West Virginia State Eco Dev		5.000				64,310.74			
			<b>Subtotal</b>	<b>5,847,899.84</b>	<b>119,899.84</b>	<b>5,793,093.54</b>	<b>-45,806.31</b>	<b>-8,999.99</b>	<b>-54,806.30</b>	<b>65,093.54</b>
							<b>74,093.53</b>			
<b>General Fund</b>										
10120	GEN	01/20/2021	2,000,000.00	1,995,200.00	-4,800.00	1,997,866.67	1,840.00	826.67	2,666.67	-2,133.33
	Banco Credito MIA CP						-2,960.00			
10125	GEN	04/30/2021	4,000,000.00	4,018,040.00	18,040.00	4,017,840.66	0.00	-199.34	-199.34	17,840.66
	Boces NY Sole Supervisory		1.250				18,040.00			
10114	GEN	11/01/2020	2,795,000.00	2,851,542.85	56,542.85	2,795,000.00	-48,227.73	-8,315.12	-56,542.85	0.00
	DFW Int'l Airport Rev		5.000				8,315.12			
10123	GEN	05/01/2022	2,500,000.00	2,546,300.00	46,300.00	2,544,806.45	0.00	-1,493.55	-1,493.55	44,806.45
	NYC Trans Finance Auth		1.650				46,300.00			
10117	GEN	06/15/2021	1,875,000.00	1,958,643.75	83,643.75	1,921,034.89	-31,443.47	-6,165.39	-37,608.86	46,034.89
	West Virginia State Eco Dev		5.000				52,200.28			
			<b>Subtotal</b>	<b>13,369,726.60</b>	<b>199,726.60</b>	<b>13,276,548.67</b>	<b>-77,831.20</b>	<b>-15,346.73</b>	<b>-93,177.93</b>	<b>106,548.67</b>
							<b>121,895.40</b>			
<b>QSCB - Reserve Fund</b>										
10121	QSCB	01/20/2021	2,500,000.00	2,494,000.00	-6,000.00	2,497,333.33	2,300.00	1,033.33	3,333.33	-2,666.67
	Banco Credito MIA CP		0.480				-3,700.00			
10122	QSCB	07/21/2022	2,000,000.00	1,998,500.00	-1,500.00	1,998,907.56	281.51	126.05	407.56	-1,092.44
	FFCB Call Note	07/21/2021	0.220				-1,218.49			
10124	QSCB	08/01/2022	1,575,000.00	1,614,123.00	39,123.00	1,613,036.25	0.00	-1,086.75	-1,086.75	38,036.25
	NYC Trans Finance Auth		1.850				39,123.00			
10119	QSCB	10/01/2021	2,490,000.00	2,524,137.90	34,137.90	2,513,275.84	-8,746.07	-2,115.99	-10,862.06	23,275.84
	San Bernardino County CA		2.030				25,391.83			
10083	QSCB	02/15/2021	1,305,000.00	1,321,129.80	16,129.80	1,307,369.35	-13,076.98	-683.47	-13,760.45	2,369.35
	University of Houston		3.300				3,052.82			
			<b>Subtotal</b>	<b>9,951,890.70</b>	<b>81,890.70</b>	<b>9,929,922.33</b>	<b>-19,241.54</b>	<b>-2,726.83</b>	<b>-21,968.37</b>	<b>59,922.33</b>
							<b>62,649.16</b>			

**McAllen ISD**  
**Amortization Schedule**  
**October 1, 2020 - October 31, 2020**

<u>Investment #</u>	<u>Maturity Date</u>	<u>Beginning Par Value</u>				<u>Amounts Amortized</u>				
<u>Issuer</u>	<u>Fund</u>	<u>Amort. Date</u>	<u>Current Rate</u>	<u>Purchase Principal</u>	<u>Original Premium or Discount</u>	<u>Ending Book Value</u>	<u>And Unamortized As of 10/01/2020</u>	<u>Amount Amortized This Period</u>	<u>Amt Amortized Through 10/31/2020</u>	<u>Amount Unamortized Through 10/31/2020</u>
			Total	29,169,517.14	401,517.14	28,999,564.54	-142,879.05 258,638.09	-27,073.55	-169,952.60	231,564.54



**McAllen ISD**  
**Projected Cashflow Report**  
**Sorted by Monthly**  
**For the Period November 1, 2020 - May 31, 2021**

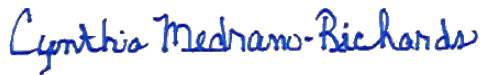
Patterson & Associates  
 901 S. MoPac  
 Suite 195  
 Austin, TX 78746

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
<b>November 2020</b>										
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
11/01/2020	10123	GEN	64971WJ35	Interest	NYC Trans Finance Auth	0.00	0.00	0.00	20,625.00	20,625.00
<b>Total for November 2020</b>						<b>2,795,000.00</b>	<b>2,851,542.85</b>	<b>2,795,000.00</b>	<b>90,500.00</b>	<b>2,885,500.00</b>
<b>December 2020</b>										
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
<b>Total for December 2020</b>						<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>104,625.00</b>	<b>104,625.00</b>
<b>January 2021</b>										
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
<b>Total for January 2021</b>						<b>4,500,000.00</b>	<b>4,489,200.00</b>	<b>4,500,000.00</b>	<b>2,200.00</b>	<b>4,502,200.00</b>
<b>February 2021</b>										
02/01/2021	10124	QSCB	64971WP38	Interest	NYC Trans Finance Auth	0.00	0.00	0.00	14,568.75	14,568.75
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
<b>Total for February 2021</b>						<b>1,305,000.00</b>	<b>1,321,129.80</b>	<b>1,305,000.00</b>	<b>36,101.25</b>	<b>1,341,101.25</b>
<b>April 2021</b>										
04/01/2021	10119	QSCB	796815ZF8	Interest	San Bernardino County CA	0.00	0.00	0.00	25,273.50	25,273.50
04/30/2021	10118	CP	114727VW7	Maturity	Broome County NY	3,418,000.00	3,434,850.74	3,418,000.00	59,815.00	3,477,815.00
04/30/2021	10125	GEN	096575KZ7	Maturity	Boces NY Sole Supervisory	4,000,000.00	4,018,040.00	4,000,000.00	25,277.78	4,025,277.78
<b>Total for April 2021</b>						<b>7,418,000.00</b>	<b>7,452,890.74</b>	<b>7,418,000.00</b>	<b>110,366.28</b>	<b>7,528,366.28</b>
<b>May 2021</b>										
05/01/2021	10123	GEN	64971WJ35	Interest	NYC Trans Finance Auth	0.00	0.00	0.00	20,625.00	20,625.00
<b>Total for May 2021</b>						<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>20,625.00</b>	<b>20,625.00</b>
<b>GRAND TOTALS:</b>						<b>16,018,000.00</b>	<b>16,114,763.39</b>	<b>16,018,000.00</b>	<b>364,417.53</b>	<b>16,382,417.53</b>

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** 

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



**71** \_\_\_\_\_  
**Superintendent of Schools**

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR  
 MCALLEN I.S.D. TAXES COLLECTED FOR:  
 OCTOBER 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	88,388,374.05	1,595,127.33		992,766.93	87,786,013.65	1.78%	2.20%
2019 & PRIOR YRS	7,532,806.64	1,204,144.86	(182,936.50)	(225,698.79)	5,920,026.49	16.90%	15.51%
ROLLBACK	54,273.83	22,272.60		-	32,001.23	41.04%	64.23%
<b>TOTALS</b>	<b>95,975,454.52</b>	<b>2,821,544.79</b>	<b>(182,936.50)</b>	<b>767,068.14</b>	<b>93,738,041.37</b>		

**BREAKDOWN OF TAX COLLECTIONS AND FEES FOR THE MONTH OF OCTOBER 2020**

	MCALLEN ISD	MONTHLY MODIFICATIONS
CURRENT YEAR-BASE TAX	1,595,127.33	992,766.93 CURRENT
CURRENT YEAR-P&I	-	
PRIOR YEARS-BASE TAX	72,215.81	(148,915.47) PRIOR
PRIOR YEARS-P&I	57,404.15	
ROLLBACK	-	- ROLLBACK
ROLLBACK P&I	-	
ATTORNEY FEES	42,777.56	- PURGED
<b>TOTAL COLLECTIONS</b>	<b>1,767,524.85</b>	<b>843,851.46</b>
LESS TRANSFERRED	189,505.32	
LESS IN TRANSIT	1,564,337.79	
LESS DUE TO HCAD COMM FEES	486.74	
LESS DUE TO CO TREASURER	13,195.00	
<b>BALANCE</b>	<b>(0.00)</b>	

\*\*\*\*\*AFFIDAVIT\*\*\*\*\*

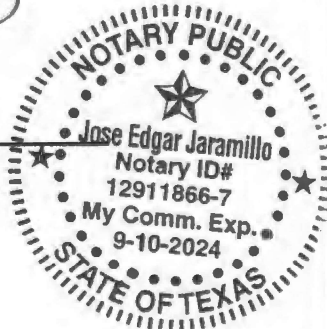
I, PABLO "PAUL" VILLARREAL JR., ASSESSOR-COLLECTOR OF TAXES FOR THE MCALLEN I.S.D., DO SOLEMNLY SWEAR THAT THE ABOVE STATEMENT OF TAXES COLLECTED BY ME FOR THE MONTH OF OCTOBER IS CORRECT.

*Pablo Paul Villarreal Jr.*  
 \_\_\_\_\_  
 ASSESSOR-COLLECTOR OF TAXES FOR MCALLEN I.S.D., TEXAS



SWORN AND SUBSCRIBED BEFORE ME THIS 9TH DAY OF NOVEMBER 2020 A.D.

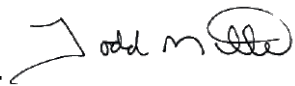
*Jose E. Jaramillo*  
 \_\_\_\_\_  
 NOTARY PUBLIC, HIDALGO COUNTY, TEXAS



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** \_\_\_\_\_

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**

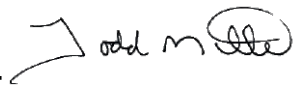


73 \_\_\_\_\_  
**Superintendent of Schools**                      **Nov 16, 2020**

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** \_\_\_\_\_

**SUPERVISOR:** 

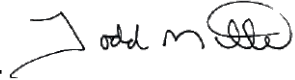
**Approved for presentation to the Board of Education:**



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** \_\_\_\_\_

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**




75 \_\_\_\_\_  
**Superintendent of Schools**                      **Dec 1, 2020**

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** *Maribelle Elizondo (Spec Ed)*  
Maribelle Elizondo (Spec Ed) (Nov 20, 2020 11:01 CST)

**SUPERVISOR:**   
Silvia Ibarra (Nov 20, 2020 11:18 CST)

**Approved for presentation to the Board of Education:**



76  
**Superintendent of Schools**

# ENROLLMENT AGREEMENT

**Between TSBVI, Local School District & Parent of minor student**

**THIS ENROLLMENT AGREEMENT** is entered into by and between the Texas School for the Blind and Visually Impaired, a Texas state agency (hereinafter referred to as TSBVI) and McAllen Independent School District, a Texas public school district and political subdivision (referred to as "McAllen ISD" or "Local ISD") and Parent(s)/Guardian(s) Aida Pina (referred to as "Parent") as the participating parties.

**I. Parties.**

The parties to this Enrollment Agreement are:

**Texas School for the Blind and Visually Impaired**  
1100 W. 45<sup>th</sup> Street  
Austin, Texas 78756 (512) 454-8631

And **McAllen Independent School District**  
**Maribelle Elizondo, Special Education Director**  
1619 Galveston  
McAllen, TX 78501  
956-632-3285

And **Aida Pina, Parent(s) of**  
**Isabel Pina, Student**  
2917 N. 40th St.  
McAllen, TX 78501  
956-803-7813

**II. Relationship of Parties.**

Under this Agreement, the relationship of TSBVI, Local ISD and Parent is that of mutual agreement, and not to be construed as employee/employer or subcontractor.

**III. Authority for Enrollment Agreement.**

TSBVI and Local ISD enter into this Agreement pursuant to the authority of the Interlocal Cooperation Act, Texas Gov't Code chapter 791. Both TSBVI and Local ISD are paying for the educational services under this Agreement from current budgeted funds.

**IV. Purpose.**

This Agreement is to establish a framework for collaboration among the Parties to address the student's need for specialized and intensive educational services addressing the student's visual impairment.

**V. Background.**

TSBVI serves as a resource for school districts to support visually impaired students in a manner that furthers access to the general education curriculum in the least restrictive environment. TSBVI may be considered as a location for Individualized Education Program (IEP) services when a student's Admission, Review, and Dismissal (ARD) Committee determines that additional assistance from TSBVI is needed to provide the student with a Free and Appropriate Education (FAPE). TSBVI is intended to serve students with a need for specialized and intensive services related to a visual impairment that cannot reasonably be provided by the Local ISD. TSBVI provides intensive services to a student in a manner that will enable the student to later return to be appropriately served in a Local ISD program and should not be considered a long term placement. At the time of referral, the Local ISD, the Parent, and TSBVI will begin a plan for the successful transition of the student to return from TSBVI back to an ISD program in the home community.

**VI. Objectives.**

1. To support the ISD and student in pursuit of a quality education focused on addressing the student's needs related to a visual impairment.

2. To impart best practice information to the ISD regarding the unique issues faced by students with visual impairments.
3. To advance the quality of educational opportunities for the student.
4. To improve the student's access to the general education curriculum in the least restrictive environment (LRE).
5. To provide increased opportunity and focus on the expanded core curriculum.
6. To provide an IEP that is based on best practice full and individual evaluation procedures for students with visual impairments.
7. To support families in being informed advocates for quality education of their student with a visual impairment within an ISD program in their home community.
8. To support training as requested to ISD teams in support of the student's transition back to an ISD program in their home community.

## **VII. Responsibilities.**

### **Local ISD:**

1. Local ISD will be responsible for the provision of a FAPE while the student is in attendance at TSBVI.
2. Local ISD will be responsible for scheduling, providing notice and procedural safeguards, facilitating Admission, Review and Dismissal (ARD) Committee meetings and Re-evaluation meetings.
3. Local ISD will ensure meaningful parent participation in IEP development by sharing drafts of IEP goals and objectives, accommodations and Behavior Intervention Plan (BIP) prior to ARD meetings.
4. Local ISD will provide TSBVI with an agenda prior to the ARD meeting and staff attending or those excused with parental consent from the meeting.
5. Local ISD will participate with TSBVI to complete meeting deliberations and will ensure IEP accuracy immediately following IEP meeting.
6. Local ISD will be responsible for the written IEP report and will share a copy of the agreed upon IEP or Re-evaluation plan with Parent and TSBVI within five school days of the meeting.
7. Local ISD will facilitate any needed IEP amendments upon receipt of information to be addressed from TSBVI.
8. Local ISD will be responsible for developing plans and follow up in cooperation with TSBVI related to any meeting disagreement by the Parent/Adult Student.
9. Local ISD will provide and share a translated copy of the IEP and associated documents into the Parent's native language in accordance with the Local ISD policy and in accordance with Section 10 below. (See Translation section of District Live Binder.)
10. Local ISD will provide the Parent with a Spanish interpreter if needed, and a written or audiotaped copy of the student's IEP translated into Spanish if Spanish is the Parent's native language, if the Parent is unable to speak English; or if the Parent's native language is a language other than Spanish, make a good faith effort to provide the Parent with a written or audiotaped copy of the student's IEP translated into the Parent's native language pursuant to Education Code 29.005.
11. Local ISD will request the participation of outside agency providers at ARD meetings with the requisite Parental written consent.
12. Local ISD will provide prior written notice within five school days before proposing, refusing, changing or ceasing services unless the Parent agrees to a shorter time frame. See 34 CFR 300.503
13. Local ISD will provide certain required members to the ARD committee meeting. (See District Live Binder ARD Attendance section.)
14. Local ISD will be responsible for providing compensatory education during the summer when necessary, and all educational services to the student during times when the student is unable to attend TSBVI due to serious medical, emotional or behavioral reasons.
15. Local ISD will be responsive to communications from TSBVI to ensure timely scheduling of required meetings and to collaborate on IEP development prior to ARD meetings.
16. Local ISD must provide at the time of application, up to date immunization records TSBVI.
17. Local ISD will engage in active oversight of the student's education while attending TSBVI.
18. Local ISD will keep a Local team of VI specialists and other related service personnel available to participate in collaborative IEP development.
19. Local ISD will provide Extended School Year (ESY) program when necessary. (See ESY section of District Live Binder.)
20. Local ISD will participate in training activities with TSBVI in support of student's specialized needs related to a visual impairment and as part of the goals and activities identified by the ARD Committee to support a student's return to a Local district program.
21. Local ISD will support TSBVI staff when visiting the Local district program.
22. Local ISD will be responsible for the cost and arranging of transportation (including escorts when needed) to and from TSBVI for beginning/end of year and school holidays/closures per school calendar.

23. Local ISD has responsibility for providing the student with a diploma under certain circumstances. (See Graduation section of District Live Binder.)
24. When requested by a Parent, the Local ISD will ensure that information regarding the Local ISD's procedure for obtaining an Independent Educational Evaluation (IEE) is provided to the Parent.

**TSBVI:**

1. TSBVI will assist in scheduling meetings within required timelines.
2. TSBVI staff will complete educational related evaluations when requested and collaborate with the Local ISD when outside providers are required.
3. TSBVI will communicate directly with Parent regarding any new evaluation results, progress reports and present levels of academic achievement and functional performance prior to ARD meetings.
4. TSBVI will provide Local ISD and parent the proposed IEP before the ARD meeting.
5. TSBVI will provide grades and IEP progress reports to Local ISD and Parent on a quarterly basis, the timing of which will be reflected in the student's IEP.
6. TSBVI will update the progress reports with objective data consistent with the mastery criteria on the corresponding goal or objective.
7. TSBVI will provide data collection to support objective data noted on all IEP progress report updates for the past year upon request by Local ISD.
8. TSBVI will provide translated progress reports upon Parent request.
9. TSBVI will contact the Local ISD and parent when the student is not making sufficient progress.
10. TSBVI will apprise the Local ISD within 5 school days of any Parent concerns regarding the provision of services at TSBVI.
11. TSBVI will alert the Local ISD when the student is not in attendance at TSBVI, including medical or family reasons for absence.
12. TSBVI will provide notice to the Local ISD when the student no longer meets TSBVI's eligibility criteria and a return to a Local ISD program is required.
13. TSBVI will require students to return home on additional weekends and will provide transportation and/or reimbursement to parents for this travel.
14. TSBVI will provide a residential program to the student who lives too far away from campus to live at home and attend as a day student.
15. TSBVI will report PEIMS information for the student upon enrollment. (See PEIMS section of Live Binder.)
16. TSBVI will reimburse parents for transportation cost related to pick up and drop off for the Weekends Home Program.

**Parent:**

1. Parent will participate in all ARD committee meetings.
2. Parent will communicate routinely with both the Local ISD and TSBVI regarding the educational program.
3. Parent will communicate routinely with TSBVI staff and respond to communications within 24 hours regarding the care and support of the student.
4. Parent will take responsibility and provide for the student's medical evaluations, care and treatment while at TSBVI, including annual physical examinations and required immunizations. However, Local ISD will provide for any medical evaluation that is the responsibility of Local ISD under the IDEA.
5. Parent will keep the student at home when certain prescriptions, medical treatments or home care is required. TSBVI's Health Center Director will determine the required time for care at home and when the student may return to TSBVI.
6. Parent will adhere to TSBVI medication requirements as specified by the Health Center Director. (See Health Center information on TSBVI website.)
7. Parent will make arrangements to travel to TSBVI to transport the student home in the event of a serious medical, emotional or behavioral reason.
8. In the case of an emergency medical situation, Parent will ensure that they are available to respond to communications from the school or emergency personnel.
9. If a student requires emergency hospitalization and treatment due to an urgent need, the Parent will communicate directly with the hospital and make arrangements to come to the hospital immediately.
10. Parent will ensure that TSBVI has a list of reliable emergency contacts who can respond to TSBVI within 24 hours or sooner when emergency circumstances require parental consent for treatment.
11. Parent will communicate with TSBVI to ensure that required weekly student pick and drop off is coordinated for students who live within 50 miles of a Weekends Home transportation bus stop.
12. When student reaches 18 years of age, the student is considered an adult by law. The parent or guardian will ensure that a legal guardian is appointed by the local court or that a Power of Attorney (POA) is provided for an agent to make medical and educational decisions for the student. If the Adult Student does not have a Guardian and is not capable of providing a POA, the Local ISD will assist the Parent or other responsible Adult to provide

TSBVI an Authorization Agreement for Voluntary Caregiver. (See Adult Students section of the District Live Binder)

**Local ISD, Parent and TSBVI:**

1. With input from the Parent, Local ISD and TSBVI will collaboratively develop an Individualized Education Program (IEP) for the student while attending TSBVI.
2. With input from the Parent, Local ISD and TSBVI will participate in developing collaborative goals and activities to facilitate a student's return to a Local ISD program.

This Agreement is signed by the Parent(s) of Isabel Pina (student) and the duly authorized representatives of the TSBVI and ISD to be effective as of the last dated signature below. This Agreement may be renewed with each annual ARD establishing eligibility and continuing services at TSBVI.

INDEPENDENT SCHOOL DISTRICT


By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

TEXAS SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED


By: 

Printed Name: Emily Coleman

Title: Superintendent


Date: 11/12/20

**PARTICIPATING PARTY – PARENT**

By: 

Printed Name: Aida Pina

Date: 11-19-2020

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

**PARTICIPATING PARTY – PARENT or GUARDIAN**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_


Date: \_\_\_\_\_

**TSBVI does not discriminate on the basis of sex in any education program or activity that it operates under Title IX. Inquiries may be submitted to Susan Hauser, Title IX Coordinator, 1100 W. 45<sup>th</sup> Street, Austin, TX 78756, [HauserS@TSBVI.edu](mailto:HauserS@TSBVI.edu), (512)206-9273**

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** 

**SUPERVISOR:**   
Arely Benavides (Nov 20, 2020 13:07 CST)

**Approved for presentation to the Board of Education:**



**81** \_\_\_\_\_  
**Superintendent of Schools**

**Event Number** 2021-157 Addendum 1  
**Event Title** Replacement of East Side Halls Doors at McAllen High School  
**Event Description** Request for Cooperative Quotes (RFCQ) #2021-157  
**Event Type** RFCQ  
**Issue Date** 10/22/2020 08:00:01 AM (CT)  
**Close Date** 11/5/2020 03:00:00 PM (CT)

**Organization** McAllen ISD Purchasing  
**Workgroup** Purchasing  
**Event Owner** Carol Quintanilla  
**Email** Carolina.Quintanilla@mcallenisd.net  
**Phone** (956) 6574480  
**Fax** (956) 6574481

Responding Supplier	City	State	Response Submitted	Lines Responded	Response Total	Cooperative Contract	Number of Days to Complete Project
SpawGlass Contractors, Inc.	Harlingen	TX	11/5/2020 09:36:07 AM (CT)	1	\$85,128.00	BuyBoard Job Order Contracting (RS Means) Contract 581-19	70
LUNA GLASS LLC	MCALLEN	TX	10/22/2020 03:25:17 PM (CT)	1	\$111,012.00	Region One Purchasing Cooperative (ROPC) RFP 20-AGENCY-000069 (see attached award letter.)	120 days
Noble Texas Builders	La Feria	TX	10/28/2020 03:05:04 PM (CT)	1	\$137,585.00	BuyBoard 581-19	105

**Please note: Lines Responded and Response Total only includes responses to specification. No alternate response data is included.**

# DRAFT AIA® Document A105™ - 2017

## Standard Short Form of Agreement Between Owner and Contractor

**AGREEMENT** made as of the « » day of « » in the year « »  
(In words, indicate day, month and year.)

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

« »  
« »  
« »  
« »

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

« »  
« »  
« »  
« »

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

«small»  
« »  
« »

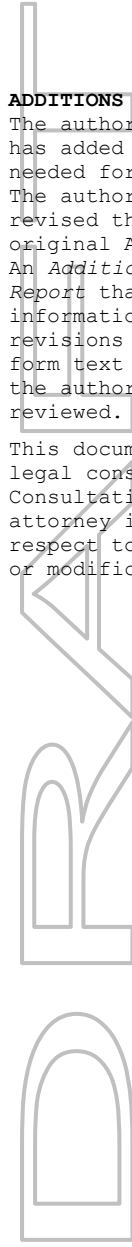
The Architect:  
(Name, legal status, address and other information)

« »  
« »  
« »  
« »

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.

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 THE CONTRACT DOCUMENTS**

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Architect, dated « » , and enumerated as follows:

Drawings:

Number	Title	Date

Specifications:

Section	Title	Pages

- .3 addenda prepared by the Architect as follows:

Number	Date	Pages

- .4 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:

<< >>

**ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

**§ 2.2 Date of Commencement:**

Unless otherwise set forth below, the date of commencement shall be the date of this Agreement. (Insert the date of commencement if other than the date of this Agreement.)

<< >>

**§ 2.3 Substantial Completion:**

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work: (Check the appropriate box and complete the necessary information.)

[ << >> ] Not later than << >> ( << >> ) calendar days from the date of commencement.

[ << >> ] By the following date: << >>

**ARTICLE 3 CONTRACT SUM**

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

<< >> (\$ << >> )

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work: (Itemize the Contract Sum among the major portions of the Work.)

Portion of the Work	Value

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner: (Identify the accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

<< >>

§ 3.4 Allowances, if any, included in the Contract Sum are as follows: (Identify each allowance.)

Item	Price

§ 3.5 Unit prices, if any, are as follows: (Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

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

**ARTICLE 4 PAYMENTS**

§ 4.1 Based on Contractor’s Applications for Payment certified by the Architect, the Owner shall pay the Contractor, in accordance with Article 12, as follows:  
(Insert below timing for payments and provisions for withholding retainage, if any.)

« »

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.  
(Insert rate of interest agreed upon, if any.)

« » % « »

**ARTICLE 5 INSURANCE**

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5.1:

§ 5.1.1 Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than « » (\$ « ») each occurrence, « » (\$ « ») general aggregate, and « » (\$ « ») aggregate for products-completed operations hazard.

§ 5.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than « » (\$ « ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 5.1.3 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers’ Compensation at statutory limits.

§ 5.1.5 Employers’ Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ 5.1.6 The Contractor shall provide builder’s risk insurance to cover the total value of the entire Project on a replacement cost basis.

**§ 5.1.7 Other Insurance Provided by the Contractor**

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits

§ 5.2 The Owner shall be responsible for purchasing and maintaining the Owner’s usual liability insurance and shall provide property insurance to cover the value of the Owner’s property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner’s property insurance.

§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor’s obligations under Section 8.12.

§ 5.4 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the Architect, Architect's consultants, and any of their agents and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance.

## ARTICLE 6 GENERAL PROVISIONS

### § 6.1 The Contract

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

### § 6.2 The Work

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

### § 6.3 Intent

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.

### § 6.4 Ownership and Use of Architect's Drawings, Specifications and Other Documents

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. The Architect shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

### § 6.5 Electronic Notice

Written notice under this Agreement may be given by one party to the other by email as set forth below.  
*(Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)*

<< >>

## ARTICLE 7 OWNER

### § 7.1 Information and Services Required of the Owner

§ 7.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

§ 7.1.3 Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence.

### § 7.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

### § 7.3 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 seven 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, correct such deficiencies. In such case, the Architect may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to the Contractor were approved by the Architect.

### § 7.4 Owner's Right to Perform Construction and to Award Separate Contracts

§ 7.4.1 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.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

## ARTICLE 8 CONTRACTOR

### § 8.1 Review of Contract Documents and Field Conditions by Contractor

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

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Architect.

### § 8.2 Contractor's Construction Schedule

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work.

### § 8.3 Supervision and Construction Procedures

§ 8.3.1 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.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, through the Architect, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection.

### § 8.4 Labor and Materials

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### § 8.5 Warranty

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 12.5.

## § 8.6 Taxes

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

## § 8.7 Permits, Fees and Notices

§ 8.7.1 The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

## § 8.8 Submittals

The Contractor shall promptly review, approve in writing, and submit to the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

## § 8.9 Use of Site

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

## § 8.10 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

## § 8.11 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

## § 8.12 Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

## ARTICLE 9 ARCHITECT

§ 9.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 9.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor.

§ 9.5 The Architect has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 On written request from either the Owner or Contractor, the Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

§ 9.8 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.

§ 9.9 The Architect's duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

#### **ARTICLE 10 CHANGES IN THE WORK**

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

§ 10.2 The Architect may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

#### **ARTICLE 11 TIME**

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Contractor is delayed at any time in progress of the Work 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, the Contract Time shall be subject to equitable adjustment.

§ 11.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

#### **ARTICLE 12 PAYMENTS AND COMPLETION**

##### **§ 12.1 Contract Sum**

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

##### **§ 12.2 Applications for Payment**

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement. The Application shall be supported by data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require, such as evidence of payments made to, and waivers of liens from, subcontractors and suppliers. 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 stored, and protected from damage, off the site at a location agreed upon in writing.

**§ 12.2.2** 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 other encumbrances adverse to the Owner's interests.

### **§ 12.3 Certificates for Payment**

The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole. If certification or notification is not made within such seven day period, 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 and the Contract Sum shall be equitably adjusted due to the delay.

### **§ 12.4 Progress Payments**

**§ 12.4.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

**§ 12.4.2** The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

**§ 12.4.3** Neither the Owner nor the Architect shall have responsibility for payments to a subcontractor or supplier.

**§ 12.4.4** 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 requirements of the Contract Documents.

### **§ 12.5 Substantial Completion**

**§ 12.5.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

**§ 12.5.2** When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Architect and the Architect will make an inspection to determine whether the Work is substantially complete. When the Architect determines that the Work is substantially complete, the Architect shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, and 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 Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

### **§ 12.6 Final Completion and Final Payment**

**§ 12.6.1** Upon receipt of a final Application for Payment, the Architect will inspect the Work. When the Architect finds the Work acceptable and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment.

**§ 12.6.2** Final payment shall not become due until the Contractor submits to the Architect releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

**§ 12.6.3** Acceptance of final payment by the Contractor, a subcontractor or 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 13 PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

## ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

## ARTICLE 15 MISCELLANEOUS PROVISIONS

### § 15.1 Assignment of Contract

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

### § 15.2 Tests and Inspections

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the Architect requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

### § 15.3 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

## ARTICLE 16 TERMINATION OF THE CONTRACT

### § 16.1 Termination by the Contractor

If the Work is stopped under Section 12.3 for a period of 14 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

### § 16.2 Termination by the Owner for Cause

§ 16.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner, after consultation with the Architect, 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

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

**§ 16.3 Termination by the Owner for Convenience**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

**ARTICLE 17 OTHER TERMS AND CONDITIONS**

*(Insert any other terms or conditions below.)*

<< >>

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

*(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)*

<< >>

\_\_\_\_\_  
**OWNER (Signature)**

<< >><> >>

\_\_\_\_\_  
*(Printed name and title )*

\_\_\_\_\_  
**CONTRACTOR (Signature)**

<< >><> >>

\_\_\_\_\_  
*(Printed name and title )*


LICENSE NO.:

JURISDICTION:

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** *Alexandra Molina*

**SUPERVISOR:**   
Arely Benavides (Dec 8, 2020 16:48 CST)

**Approved for presentation to the Board of Education:**



**94** \_\_\_\_\_  
**Superintendent of Schools**

**EVALUATION MATRIX**  
**RFP NO. 2021-156 Graphic Design and Cafeteria Decor**

No.	Criteria	Max. Pts. 100	Indeco	The Edu-Source Corp.
	<b>Total Points</b>	100	89	88
	<b>Ranking</b>			
<b>1</b>	<b>Price</b>	<b>37</b>	<b>37</b>	<b>30</b>
	<i>Cost</i>		<i>\$41,821.75</i>	<i>\$51,095.35</i>
<b>2</b>	<b>Reputation of the vendor and of the vendor's goods or services;</b>	<b>15</b>	<b>5</b>	<b>10</b>
	<i>References none/poor references=0 pts / 1 reference=5 pts / 2 references=10 pts 3 references=15 pts</i>		<i>1 reference</i>	<i>2 references</i>
<b>3</b>	<b>The quality of the vendor's goods or services</b>	<b>15</b>	<b>15</b>	<b>15</b>
	<i>Q2 – Experience with Similar Projects No experience=0 pts / 1 Project Similar experience=7.5 pts 2 Projects Similar experience=15 pts</i>		<i>2 similar projects</i>	<i>2 similar projects</i>
<b>4</b>	<b>The extent to which the goods or services meet District's needs</b>	<b>10</b>	<b>10</b>	<b>10</b>
	<i>Q4 – Key Personnel Listed=10 pts / Not listed=0 pts</i>		<i>submitted</i>	<i>submitted</i>
<b>5</b>	<b>Past Relationship with District</b>	<b>1</b>	<b>1</b>	<b>1</b>
	<i>Positive past history=2 pts; None/Not positive past history=0 pts</i>		<i>positive</i>	<i>positive</i>
<b>6</b>	<b>HUB</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>7</b>	<b>Total long-term cost to the district to acquire the vendor's goods or services</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>8</b>	<b>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</b>	<b>1</b>	<b>1</b>	<b>1</b>
	<i>Texas =1 pts; Out of State Vendor = 0 pts</i>		<i>Texas</i>	<i>Texas</i>
<b>9</b>	<b>Any other relevant factor specifically listed in the request for bids or proposals.</b>	<b>20</b>	<b>20</b>	<b>20</b>
	<i>Q1 – cover letter &amp; key qualifications No cover letter/key qualifications=0 pts / Cover letter w/no key qualifications=5 pts Cover letter w/key qualifications but less than 2 yrs exp=10 pts Cover letter w/key qualifications with more than 2 yrs exp=20 pts</i>		<i>30 yrs. exp</i>	<i>20+ yrs. exp</i>

**MCALLEN INDEPENDENT SCHOOL DISTRICT**  
**CONTRACT NO. XXXX-XXX Indeco Sales, Inc. through Request for Proposal No. 2021-156**

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

**WITNESSETH:**

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

**WHEREAS**, District requested proposals from vendors for Services, more particularly described on Exhibit A attached hereto ("District's Request for Proposal No. 2021-156");

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

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

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

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

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

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

**1. OBLIGATIONS OF THE CONTRACTOR**

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

Contractor represents and warrants to District that Contractor possesses all of the licenses, permits, and expertise required to provide the equipment, materials, and labor and perform the services contemplated hereunder.

Contractor warrants and represents that during the term of this Contract, Contractor shall maintain all such licenses and permits. Contractor warrants that the services rendered and equipment, materials, and labor furnished shall be in accordance with the terms of the Contract Documents.

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

- A. This Contract
- B. Exhibit "A" – District's Request for Proposal No. No. 2021-156
- C. Exhibit "B" – Vendor's Services, Products and Fees Pursuant to Request for Proposal No. No. 2021-156
- D. Exhibit "C" – Certificate of Insurance

This Contract is entered into subject to the following conditions:

- A. Contractor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees of District and /or the learning environment of students of District while performing its work in accordance with the Contract Documents.
- B. Contractor assumes full responsibility and liability for all labor and materials furnished and activities conducted by Contractor pursuant to this Contract and any action or omission incident thereto.

## **2. INSURANCE COVERAGE**

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

- A. Statutory Workers' Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - \$500,000
- B. Commercial General Insurance (occurrence basis only) \$1,000,000 each claim and in the aggregate.
- C. Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person \$100,000; each accident \$300,000; and for property damage, each occurrence of \$100,000. No deletions/exclusions from standard coverage form allowed without written consent of District. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

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

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

### **3. TRANSFER, ASSIGNMENT, ETC.**

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

### **4. ADJUDICATION**

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

### **5. PROVISIONS, PARAGRAPHS**

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

### **6. PAYMENT**

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

### **7. TAXES AND BENEFITS**

Contractor expressly acknowledges that Contractor will be acting as an independent contractor for all purposes, including payment of social security, withholding taxes, and all other federal, state, and local taxes. Contractor, as independent contractor, shall be solely responsible to its employees, agents, third party contractors any other person

supplying labor or material for Contractor in performing any portion of this Contract or any action or omission incident thereto. Contractor also agrees to pay for and provide workers compensation insurance covering all employees working for Contractor in performing labor pursuant to this Contract or any activity incident thereto.

#### **8. INCURRING FINANCIAL OBLIGATION**

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

#### **9. ACCESS TO BOOKS AND RECORDS**

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

#### **10. NON-DISCRIMINATION**

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

#### **11. HOLD HARMLESS**

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

#### **12. TERM AND TERMINATION OF CONTRACT**

**Term.** The term of this Contract shall commence on the Commencement Date and remain effective for a term of one (1) year, with the option to renew for three (3) additional one (1) year terms. All services must be completed during the term of the Contract.

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

**B. Termination with Cause.**

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

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

- ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 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: Indeco Sales, Inc.  
Attn: Martin Pena II, South Texas Account Manager  
Street: 805 E. 4<sup>th</sup> Avenue  
City: Belton, Texas 76513

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 on \_\_\_\_\_  
Date

**DISTRICT:**

McAllen Independent School District

By: \_\_\_\_\_

Jose A. Gonzalez, Superintendent

Indeco Sales, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

Atlas Hall & Rodriguez, LLP

by: \_\_\_\_\_

Stephen Crain

**Exhibit "A" – District's Request for Proposal No. 2021-156**

draft

**Exhibit "B" – Vendor's Services, Products and Fees Pursuant to  
Request for Proposal No. 2021-156**

draft

**Exhibit "C" – Certificate of Insurance**

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** *Judith Escamilla*

**SUPERVISOR:** *Arely Benavides*  
Arely Benavides (Dec 4, 2020 14:47 CST)

**Approved for presentation to the Board of Education:**

*J. X. O'Sullivan*

**108** \_\_\_\_\_  
**Superintendent of Schools**

**FIRST AMENDMENT TO**

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

This First Amendment to Contract No. 2021-143 (the "Contract") is made this 14<sup>th</sup> day of December, 2020 by and between McAllen Independent School District ("District") and Alan Yoder Enterprises, Incorporated dba Superior Alarms, a Texas Corporation ("Contractor") as follows:

WHEREAS, the District entered into Contract No. 2021-143 dated October 14, 2020; and

WHEREAS, the District and Contractor desire to amend the Contract.

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

1. The following locations are hereby *removed* from the fire alarm monitoring services:
  - a. Thigpen Building (Intake Center), 520 South 23<sup>rd</sup> Street
  - b. Austin Elementary Building, 2100 Fir Street;
2. The following location is hereby *removed* from the Intrusion Alarm monitoring services:
  - a. Student Alternative, 520 S. 23<sup>rd</sup> Street;
3. Except as modified herein, all terms and conditions of the Contract, as amended, remain in full force and effect. District and Contractor ratify and confirm the terms and provisions of the Contract as amended.

EXECUTED IN DUPLICATE ORIGINALS and effective as of \_\_\_\_\_.  
Date

McAllen Independent School District

Alan Yoder Enterprises, Incorporated dba  
Superior Alarms

By: \_\_\_\_\_  
Conrado Alvarado, President, Board of Trustees

By: \_\_\_\_\_  
Alan Yoder, President

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

by: Stephen L. Crain  
Stephen L. Crain (Nov 18, 2020 14:19 CST)  
Stephen Crain

McAllen ISD 2020-2021 FIRE AND INTRUSION ALARMS  
as of 12/03/20

SITE NAME	SITE ADDRESS	ALARM ROOM	ALARM PANEL	FIRE PANEL
<b>Central Administration + Stadium:</b>				
CENTRAL ADMINISTRATION	2000 N 23RD ST	COPY RM	NAPCO 1632	Silent Knight 5820 XL
HUMAN RESOURCES	2200 TAMARACK AVE	IDF MECH	NAPCO 1632	Silent Knight 6820
ADVANCED ACADEMICS PORTABLE 79	2200 TAMARACK AVE	RR	NAPCO 1632	NA
STUDENT SUPPORT SERVICES PORTABLE 69	2200 TAMARACK AVE	BREAK RM	NAPCO 1632	NA
VETERANS MEMORIAL STADIUM	2001 N BICENTENNIAL BLVD	NA	NA	NA

<b>Crockett Administration Annex:</b>				
POLICE DEPT COMMAND CENTER	2112 N MAIN ST	BACK STAGE	NAPCO 1632	EDWARD EST-IQ-500
SPECIAL EDUCATION BLDG	2112 N MAIN ST	NOC	NAPCO 9600	NA
FEDERAL PROGRAMS PORTABLE	2112 N MAIN ST	COPY RM	NAPCO 1632	NA
MIGRANT PORTABLE	2112 N MAIN ST	G1	NAPCO 1632	NA

<b>Facilities, Maintenance &amp; Operations Annex:</b>				
TRANSPORTATION DEPT	4309 WARRIOR AVE	HALLWAY	NAPCO 1632	EDWARD EST-1064
FMO BLDG	4309 WARRIOR AVE	IDF	NAPCO 9600	EDWARD QS4

<b>LISTED FOR SALE:</b>				
OLD I&G CENTER/HISTRIC ROOSEVELT*	1619 GALVESTON ST	ATTIC	NAPCO 1632	Fire-Lite, MS-5UD-3

<b>High Schools:</b>				
MCALLEN HIGH SCHOOL	2021 LA VISTA AVE	162 CUST	NAPCO 9600	EDWARD EST-3
MEMORIAL HIGH SCHOOL	101 E HACKBERRY AVE	PHONE RM LOUNGE	GEM 255X	Silent Night 5820XL
ROWE HIGH SCHOOL	2101 N WARE RD	A34 MECH	GEM 255X	FARENHYT, IFP-2000 ECS
LAMAR ACADEMY	1009 N 10TH ST	101B MECH	NAPCO 9600	Silent Knight 5820XL-EVS
ACHIEVE EARLY COLLEGE HIGH SCHOOL	1601 N 27TH ST	A04 STOR	NAPCO 1632	Silent Knight 5820XL-EVS
INSTRUCTIONAL GUIDANCE CENTER	2604 GALVESTON AVE	3A MECH	NAPCO 1632	Silent Knight 5820

<b>Middle Schools:</b>				
TRAVIS MIDDLE SCHOOL	600 W HOUSTON AVE	L03 WORK RM	NAPCO 9600	EST, QUICK-START QS1
BROWN MIDDLE SCHOOL	2700 S WARE RD	A07 TEST ROOM	NAPCO 1632	Silent Knight #5820XL
CATHEY MIDDLE SCHOOL	1800 N CYNTHIA ST	142 STOR LIBRARY	NAPCO 9600	Cerberus Pyrotronics MXL-IQ
DE LEON MIDDLE SCHOOL	4201 N 29TH ST	107 SEC OFFICE	NAPCO 9600	NOTIFIER, 3030D
MORRIS MIDDLE SCHOOL	1400 TRENTON RD	A11 MECH	NAPCO 1632	Silent Knight #5820XL-EVS
FOSSUM MIDDLE SCHOOL	7800 N WARE RD	D105 IDF	V-250BP	Siemens MXL

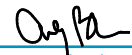
<b>Elementary Schools:</b>				
ALVAREZ ELEM SCHOOL	2606 GUMWOOD AVE	34D MECH	NAPCO 9600	Silent Knight #5820XL-EVS
BONHAM ELEM SCHOOL	2501 JORDAN RD W	D MECH	NAPCO 1632	Silent Knight #5820XL-EVS
CASTANEDA ELEM SCHOOL	4100 N 34TH ST	A19 STOR	NAPCO 1632	CERBERUS PYROTRONICS MXL-IQ
ESCONDON ELEM SCHOOL	2901 COLBATH AVE	D13 MECH/CUST	NAPCO 1632	Silent Knight #5820XL-EVS
FIELDS ELEM SCHOOL	500 W DALLAS AVE	A109 IDF	V-128	EST, QUICK-START QS1
GARZA ELEM SCHOOL	6300 N 29TH ST	61A MECH	NAPCO 9600	Silent Knight 6820
GONZALEZ ELEM SCHOOL	201 E MARTIN AVE	111A STOR	NAPCO 1632	Silent Knight #5820XL
HENDRICKS ELEM SCHOOL	3900 GOLDCREST AVE	A108	DSC 420	EDWARDS, EST-3
HOUSTON ELEM SCHOOL	3221 OLGA AVE	206 MECH	NAPCO 9600	Silent Knight #5820XL-EVS
JACKSON ELEM SCHOOL	501 W HARVEY ST	A1A MECH	NAPCO 1632	Cerberus Pyrotronics MXL-IQ
MCAULIFFE ELEM SCHOOL	3000 DAFFODIL AVE	123 MECH	NAPCO 9600	Silent Knight # 5820XL
MILAM ELEM SCHOOL	3800 N MAIN ST	206 MECH	NAPCO 1632	Silent Knight # 5820XL
PEREZ ELEM SCHOOL	7801 N MAIN ST	B101 MDF	NAPCO 9600	EDWARDS, EST-3
RAYBURN ELEM SCHOOL	7000 N MAIN ST	02 STOR	NAPCO 1632	Silent Knight # 5820XL
ROOSEVELT ELEM SCHOOL	4801 S 26TH ST	M-2 MECH	NAPCO 9600	Silent Knight # 5820XL
SANCHEZ ELEM SCHOOL	2901 INCARNATE WORD AVE	B101 MDF	NAPCO 9600	EDWARDS, EST3
SEGUIN ELEM SCHOOL	2200 N 29TH ST	E 1A MECH	NAPCO 9600	Silent Knight #5820XL-EVS
THIGPEN/ZAVALA ELEM SCHOOL	2500 GALVESTON AVE	A109 IDF	V-128	EDWARDS, QS-1
WILSON ELEM SCHOOL	1200 W HACKBERRY AVE	139 STORG	NAPCO 1632	Silent Knight #5820XL-EVS
NAVARRO EARLY CHILDHOOD CENTER (+ FEDERAL)	2100 W HACKBERRY AVE	A5 RECEP	NAPCO 9600	Siemens MXL-IQ

<b>REMOVE:</b>				
Achieve Early Collage	3200 W PECAN BLDG M	A04 STOR	NAPCO 1632	NA
Student Alternative	520 S 23RD STREET	OFFICE AREA	NAPCO 1632	Cerberus Pyrotronics MXL-IQ
Austin Elem School Bldg.	2100 Fir Ave.	NA	NA	Silent Knight 6700

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** 

**SUPERVISOR:**   
Arely Benavides (Dec 7, 2020 11:12 CST)

**Approved for presentation to the Board of Education:**



**114** \_\_\_\_\_  
**Superintendent of Schools**

**2021-018 Glass Glazing Supplies & Installation Services  
Deadline November 18, 2020 at 3:00 PM (CST)**

<b>1 ACRYLIC - 1/4 inch Plexiglass</b>						
Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$11.00	\$11.00 per foot 245.00 sheet	n/a	Primary
LUNA GLASS LLC	1	SQFT	\$15.50	CLEAR PLEXIGLASS INSTOCK, MINIMUM ORDER 3'.0" SQFT	A&C PLASTICS	Qualified
<b>2 GLASS - 1/8 inch Tempered Glass</b>						
Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$7.00	\$7.00 PER FOOT DELIVERY TIME 1 WEEK	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$11.50		COMPLETE LINE GLASS AND TRULITE GLASS	Qualified
<b>3 GLASS - 1/4 inch Tempered Glass</b>						
Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$10.50	\$10.50 PER FOOT DELIVERY TIME IN 1 WEEK	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$12.50		COMPLETE LINE GLASS AND TRULITE GLASS	Qualified
<b>4 GLASS - 1/4 inch Wire Reinforced Glass, Diamond Pattern, Swiped Edge</b>						
Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$25.00	\$25.00 PER FOOT DELIVERY TIME IN 1 WEEK	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$35.00		COMPLETE LINE GLASS AND TRULITE GLASS	Qualified
<b>5 GLASS - 1/8 Single-Pane Glass</b>						
Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$4.50	\$4.50 PER FOOT SAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$5.50		COMPLETE LINE GLASS AND TRULITE GLASS	Qualified
<b>6 GLASS - 1/8 inch Single-Pane Glass</b>						
Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$4.50	\$4.50 PER FOOT DELIVERY TIME- SAME DAY	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$5.50		COMPLETE LINE GLASS AND TRULITE GLASS	Qualified
<b>7 GLASS - 1/4 inch Single-Pane Glass</b>						
Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$7.50	\$7.50 PER FOOT DELIVERY TIME-3 DAYS	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$10.50		COMPLETE LINE GLASS AND TRULITE GLASS	Qualified
<b>8 GLASS - 1 inch Annealed/Insulated Plate Glass</b>						
Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$16.50	\$16.50 PER FOOT SAME DAY DELIVERY	N/A	Primary

## 2021-018 Glass Glazing Supplies & Installation Services

**Deadline November 18, 2020 at 3:00 PM (CST)**

LUNA GLASS LLC	1	SQFT	\$35.00	\$35 SQFT PRICE ON CLEAR OVER CLEAR ANNEALED GLASS, SPECIAL ORDER ON INSULATED WINDOW GLASS UNITS (INCLUDING COLOR, LOW E, SHAPE, ARE QUOTED UPON REQUEST.)	COMPLETE LINE GLASS AND TRULITE GLASS	Qualified
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<b>9</b>	<b>GLASS - 1 inch Double Insulated Glass</b>
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Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$16.50	\$16.50 PER FOOTSAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$35.00	\$35 SQFT PRICE ON CLEAR OVER CLEAR ANNEALED GLASS, SPECIAL ORDER ON INSULATED WINDOW GLASS UNITS (INCLUDING COLOR, LOW E, SHAPE, ARE QUOTED UPON REQUEST.)	COMPLETE LINE GLASS AND TRULITE GLASS	Qualified

<b>10</b>	<b>GLASS - 1/2 inch Double Insulated Glass</b>
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Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$12.00	\$12.00 PER FOOT, 1/8 GLASS 6.003 DAYS DELIVERY	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$29.00	\$29 SQFT PRICE ON CLEAR OVER CLEAR ANNEALED GLASS, SPECIAL ORDER ON INSULATED WINDOW GLASS UNITS (INCLUDING COLOR, LOW E, SHAPE, ARE QUOTED UPON REQUEST.)	COMPLETE LINE GLASS AND TRULITE GLASS	Qualified

<b>11</b>	<b>GLASS - 1/4 inch Bronze Safety Laminated Glass</b>
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Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$11.00	\$11.00 PER FOOT SAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$14.50		COMPLETE LINE GLASS AND TRULITE GLASS	Qualified

<b>12</b>	<b>GLASS - 1/8 inch Obscure Plate Glass</b>
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Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$4.50	\$ 4.50 PER FOOT, \$66.00 SHEET..48X96SAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$10.00		COMPLETE LINE GLASS	Qualified

<b>13</b>	<b>GLASS - 1/4 inch Obscure Plate Glass</b>
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Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$4.50	\$ 4.50, 3/10 ONLY. \$66.00 PER SHEETSAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	SQFT	No Bid		Libbey Owens Ford, Pittsburg Plate Glass or equal	Reject Item

<b>14</b>	<b>GLASS - 3/16 inch Obscure Plate Glass</b>
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Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$9.50	\$9.50 PER FOOTSAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$12.00		COMPLETE LINE GLASS	Qualified

**2021-018 Glass Glazing Supplies & Installation Services  
Deadline November 18, 2020 at 3:00 PM (CST)**

15	<b>GLASS - 1/8 inch Annealed Glass. Must have a breaking strength of about 500 psi. Color: Clear</b>					
	Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer
	LUNA GLASS LLC	1	SQFT	\$5.50		COMPLETE LINE GLASS AND TRULITE GLASS

Primary

16	<b>GLASS - 1/4 inch Annealed Glass. Must have a breaking strength of about 500 psi. Color: Clear</b>					
	Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer
	LUNA GLASS LLC	1	SQFT	\$10.50		COMPLETE LINE GLASS AND TRULITE GLASS

Primary

17	<b>GLASS PANEL UNIT - 1 inch Insulated/Tempered Glass. One side 1/4 inch green tint tempered glass and other side 1/4 inch Clear tempered glass. Double insulated makeup with six (6) faux divided light 5/8 inch W x 1/2 inch thick aluminum muntins. The District normally will purchase a glass panel size 48 inch x 60 inch; however, please price by the sq. ft.</b>					
	Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer
	D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$32.00	\$32.00 PER FOOT1 WEEK DELIVERY TIME	N/A

Primary

LUNA GLASS LLC	1	SQFT	\$45.00	\$45 SQFT PRICE ON LOW E GREEN OVER CLEAR SAFETY TEMPERED GLASS WITH ALUMINUM MUNTIN BARS, SPECIAL ORDER ON INSULATED WINDOW GLASS UNITS (INCLUDING DIFFERENT COLOR, LOW E, OR SHAPE, ARE QUOTED UPON REQUEST.)	COMPLETE LINE GLASS AND TRULITE GLASS	Qualified
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18	<b>GLASS PANEL UNIT - 1 inch Insulated/Tempered Glass. One side 1/4 inch green tint tempered glass and other side 1/4 inch Clear tempered glass. Double insulated makeup with six (6) faux divided light 5/8 inch W x 1/2 inch thick aluminum muntins. The District normally will purchase a glass panel size 48 inch x 60 inch; however, please price by the sq. ft.</b>					
	Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer
	D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$32.00	\$32.00 PER FOOTDELIVERY TIME 1 WEEK	N/A

Primary

LUNA GLASS LLC	1	SQFT	\$45.00	\$45 SQFT PRICE ON LOW E GREEN OVER CLEAR SAFETY TEMPERED GLASS WITH ALUMINUM MUNTIN BARS, SPECIAL ORDER ON INSULATED WINDOW GLASS UNITS (INCLUDING DIFFERENT COLOR, LOW E, OR SHAPE, ARE QUOTED UPON REQUEST.)	COMPLETE LINE GLASS AND TRULITE GLASS	Qualified
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19	<b>GLASS PANEL UNIT - 1 inch Insulated/Tempered Glass. One side 1/4 inch green tint tempered glass and other side 1/4 inch Clear tempered glass. Double insulated makeup with six (6) faux divided light 5/8 inch W x 1/2 inch thick aluminum muntins. The District normally will purchase a glass panel size 48 inch x 60 inch; however, please price by the sq. ft.</b>					
	Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer
	D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$32.00	\$32.00 PER FOOTDELIVERY TIME 1 WEEK	N/A

Primary

**2021-018 Glass Glazing Supplies & Installation Services**  
**Deadline November 18, 2020 at 3:00 PM (CST)**

LUNA GLASS LLC	1	SQFT	\$45.00	\$45 SQFT PRICE ON LOW E GREEN OVER CLEAR SAFETY TEMPERED GLASS WITH ALUMINUM MUNTIN BARS, COMPLETE LINE SPECIAL ORDER ON INSULATED GLASS AND TRULITE WINDOW GLASS UNITS (INCLUDING GLASS DIFFERENT COLOR, LOW E, OR SHAPE, ARE QUOTED UPON REQUEST.)	Qualified
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**20** GLASS PANEL UNIT - 1 inch Insulated/Tempered Glass. One side 1/4 inch green tint tempered glass and other side 1/4 inch Clear tempered glass. Double insulated makeup with six (6) faux divided light 5/8 inch W x 1/2 inch thick aluminum muntins. The District normally will purchase a glass panel size 48 inch x 60 inch; however, please price by the sq. ft.

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$32.00	\$32.00 PER FOOT	N/A	Primary

LUNA GLASS LLC	1	SQFT	\$45.00	\$45 SQFT PRICE ON LOW E GREEN OVER CLEAR SAFETY TEMPERED GLASS WITH ALUMINUM MUNTIN BARS, COMPLETE LINE SPECIAL ORDER ON INSULATED GLASS AND TRULITE WINDOW GLASS UNITS (INCLUDING GLASS DIFFERENT COLOR, LOW E, OR SHAPE, ARE QUOTED UPON REQUEST.)	Qualified
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**21** LAMINATED - 1/4 inch Gray Safety Laminated Glass. Glass/Polyvinyl butyral (PVB)/Glass manufactured process to create a single construction. Glass must not fracture into pieces when broken. Color: Clear. Laminated glass shall comply with ASTM C1172 and with other requirements as specified (UL972, ASTM F1233, etc.).

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
LUNA GLASS LLC	1	SQFT	\$14.50		COMPLETE LINE GLASS AND TRULITE GLASS	Primary
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$28.00	\$28.00 PER FOOT	N/A	Qualified

**22** LAMINATED - 1/4 inch Clear Safety Laminated Glass. Glass/Polyvinyl butyral (PVB)/Glass manufactured process to create a single construction. Glass must not fracture into pieces when broken. Color: Clear. Laminated glass shall comply with ASTM C1172 and with other requirements as specified (UL972, ASTM F1233, etc.).

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
LUNA GLASS LLC	1	SQFT	\$12.50		COMPLETE LINE GLASS AND TRULITE GLASS	Primary
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$28.00	\$28.00 PER FOOT	N/A	Qualified

**23** LAMINATED - 1/4 inch Clear Safety Laminated Bronze. Glass/Polyvinyl butyral (PVB)/Glass manufactured process to create a single construction. Glass must not fracture into pieces when broken. Color: Clear. Laminated glass shall comply with ASTM C1172 and with other requirements as specified (UL972, ASTM F1233, etc.).

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
LUNA GLASS LLC	1	SQFT	\$14.50	LINE ITEM #23 ASKS FOR BOTH, CLEAR AND BRONZE. ADDED PRICE FOR BRONZE SINCE LINE ITEM #22 ALRAEDE HAD ASK FOR CLEAR.	COMPLETE LINE GLASS AND TRULITE GLASS	Primary
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$28.00	\$28.00 PER FOOT	N/A	Qualified

**2021-018 Glass Glazing Supplies & Installation Services**  
**Deadline November 18, 2020 at 3:00 PM (CST)**

**24 MIRROR - 1/4 inch Mirror. Color: Clear**

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$8.50	\$8.50SAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$11.00	\$11 SQFT ON SQUARE OF RECTANGULAR SHAPES. CUSTOM CUT SHAPES ARE QUOTED UPON REQUEST.	COMPLETE LINE GLASS AND TRULITE GLASS	Qualified

**25 MIRROR - 24 inch X 36 inch Theft proof mirror with SS frame**

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$45.00	TOO MANY SPECS + OPTIONS STATION @ 45.00-\$200.001 WEEK DELIVERY TIME	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$225.00	SPECIAL ORDER, QUOTE GIVEN FOR ONE UNIT INCLUDING SHIPING. IF ORDER MORE SHIPPING CHARGE WILL INCREASE AS PER MANUFACTURER/DISTRIBUTOR.	AMERICAN SPECIALTIES	Qualified

**26 POLYCARBONATE SHEET - 1/4 inch Lexan, Regular**

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$11.50	\$11.50 PER FOOT. 48X96 SHEET-\$221.12DELIVERY TIME 3 DAYS	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$20.00	ITEM NOT INSTOCK - SPECIAL ORDER, WAIT TIME 2-3 DAYS, FREIGHT COST INCLUDED, MINIMUM ORDER ONE SHEET 4'.0' X 8'.0"	A & C PLASTICS	Qualified

**27 POLYCARBONATE SHEET - 1/4 inch Lexan, XL10, UV Grade**

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$14.00	\$14.00 PER FOOTDELIVERY TIME 3 DAYS	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$25.00	ITEM NOT INSTOCK - SPECIAL ORDER, WAIT TIME 2-3 DAYS, FREIGHT COST INCLUDED, MINIMUM ORDER ONE SHEET 4'.0' X 8'.0"	A & C PLASTICS	Qualified

**28 POLYCARBONATE SHEET - 1/4 inch Polycarbonate**

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	SQFT	\$11.50	\$11.50 PER FOOTSAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	SQFT	\$20.00	ITEM NOT INSTOCK - SPECIAL ORDER, WAIT TIME 2-3 DAYS, FREIGHT COST INCLUDED, MINIMUM ORDER ONE SHEET 4'.0' X 8'.0"	A & C PLASTICS	Qualified

**29 NORMAL HOURLY RATE - Hourly rate for installation during normal business hours 8:00 AM - 5:00 PM Monday - Friday. Pricing specified by the bidder shall include all such direct and indirect overhead costs such as transportation, fuel, labor cost, etc. Normal response time shall be within one business day after service call has been placed by the District.**

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	HOURLY RATE	\$28.50	\$28.50SAME DAY DELIVERY	N/A	Primary

## 2021-018 Glass Glazing Supplies & Installation Services

**Deadline November 18, 2020 at 3:00 PM (CST)**

LUNA GLASS LLC	1	HOURLY RATE	\$150.00	\$75 PER MEN (TWO MEN CREW) = \$150 PER HOUR	\$75 PER MEN (TWO MEN CREW) = \$150 PER HOUR	Qualified
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**30** EMERGENCY HOURLY RATE - Hourly rate for installation for an emergency. Please state hours your company considers in emergency hours in ch. Pricing specified by the bidder shall include all such direct and indirect overhead costs such as transportation, fuel, labor cost, etc. Emergency response time shall be within two (2) hours after service call has been placed by the District.

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	HOURLY RATE	\$55.00	\$55.00 MIN 2SAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	HOURLY RATE	\$170.00	FROM 6:00AM - 6:00PM (RESPONSE TIME WILL BE WITHIN TWO HOURS AFTER SERVICE CALL HAS BEEN PLACED BY DISTRICT)	\$85 PER MEN (TWO MEN CREW) = \$170 PER HOUR	Qualified

**31** AFTER HOURS RATE - After hours rate for installation after 6:00 PM Monday-Friday and Weekends (Saturday and Sunday). Pricing specified by the bidder shall include all such direct and indirect overhead costs such as transportation, fuel, labor cost, etc. Normal response time shall be within one business day after service call has been placed by the District.

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	HOURLY RATE	\$55.00	\$55.00 MIN-2SAME DAY DELIVERY	N/A	Primary
LUNA GLASS LLC	1	HOURLY RATE	\$195.00		\$97.50 PER MEN (TWO MEN CREW) = \$195 PER HOUR	Qualified

**32** HOLIDAY HOURLY RATE - Hourly rate for installation during holiday. Pricing specified by the bidder shall include all such direct and indirect overhead costs such as transportation, fuel, labor cost, etc. New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day will be considered holidays for the purpose of this contract, all other days will be treated as a regular workday.

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
D & R Commercial Glass (D & R Commercial Glass LLC)	1	HOURLY RATE	\$55.00	\$55.00 M IN 2	N/A	Primary
LUNA GLASS LLC	1	HOURLY RATE	\$195.00	LUNA GLASS LLC IS CLOSED ON NEW YEAR'S DAY, THANKSGIVING DAY AND CHRISTMAS DAY, WILL NOT BE ABLE TO SERVICE ANY CALLS DURING THIS DAYS.	\$97.50 PER MEN (TWO MEN CREW) = \$195 PER HOUR	Qualified

**33** BLANKET DISCOUNT - For similar items or services not listed in the above bid items. (Enter percent in decimal format, Enter category description in space titled "Manufacturer")

Supplier	QTY	UOM	Price	Supplier Notes	Manufacturer	
LUNA GLASS LLC	1	PERCENT	No Bid			Reject Item

**34** Other Service: Please provide information on other products and/or services your company offers for similar items not already listed in this bid event, including any discounts. Enter in the hourly on-site labor charge per person for installation jobs. Use the "Add Notes" feature (under the cost response box) to give details on the product or service. To provide additional "other" services, select the "Add Alternate" option located under the cost response box. You may enter as many "alternate" services as needed

Reject Item

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBJECT:** Approval of Memorandum of Understanding No. 2021-181 with the City of McAllen for a Co-Location Data and Network Operations Center

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

**BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:**

A high performing and reliable Data Center and Network Operations Center (“NOC”) is critical to the ongoing operations of the District. In order to provide uninterrupted access to resources 365 days a year, 24 hours a day, 7 days a week for all district users, certain measures must be taken with regards to infrastructure. The area currently housing the district’s NOC (Crockett) has an aged electrical grid with aged telecommunications and housed in a building with major deficits including roofing issues and other major structural and cooling challenges. This area has repeated electrical “brownouts”, an unintentional drop in voltage to electrical power supply. Our NOC equipment operates at specific voltages thus fluctuation in power can cause major damage. Other challenges in the current space include risk of flooding.

The Department of Technology is creating a concurrent, “active-active”, NOC at FMO and at the City of McAllen Library’s co-location center that was built with this type of service in mind. This is an additional step in building the resilience needed to ensure that McAllen ISD’s students and employees can have an uninterrupted technology experience when accessing the resources they need.

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

The City of McAllen Library is part of the City of McAllen fiber network and currently McAllen ISD already has a direct point-to-point 10G connection to that network that can be scaled to 100G. This connection is segregated only for District use and not shared with any other entity. In addition to this dedicated connection, the co-location center would provide the District with a center that has structural building integrity, power, climate control, raised flooring, a generator and has multiple service providers to the building.

**LEGAL REVIEW:**

The Memorandum of Understanding has been approved by legal counsel.

**BUDGETARY CONSIDERATIONS:**

Through a partnership with the City of McAllen via this MOU, the co-location center is at no cost to the district.

**RECOMMENDED BOARD ACTION:**

Administration recommends that the Board of Trustees approve Memorandum of Understanding No. 2021-181 with McAllen Public Utilities and City of McAllen for a Co-Location Data and Network Operations Center.

**SUBMITTED BY:** 

**SUPERVISOR:**   
Arely Benavides (Dec 11, 2020 09:43 CST)

For further information contact:  
Name: Judith Escamilla  
Office: 956-618-3238  
email: judith.escamilla@mcallenisd.net

**Approved for presentation to the Board of Education:**



## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and among the McAllen Independent School District ("MISD"), and the City of McAllen ("City").

Whereas City has a data center located at the main library, 4001 N. 23<sup>rd</sup> Street, McAllen, Texas ("Library"); and

Whereas MISD has only one data center and does not have a location to keep a second copy of their backup data; and

Whereas MISD would like to house their equipment at the Library as a backup to their primary data center; and

Whereas MISD has in the past donated network equipment to the City and otherwise cooperated on IT issues to the mutual benefit of both parties;

NOW THEREFORE in consideration of the following mutual covenants the Parties agree as follows:

1. MISD

- 1.1 MISD will house certain equipment at the Library for the purpose of a backup to their primary data center.
- 1.2 MISD shall maintain their equipment at their sole cost and responsibility.
- 1.3 MISD shall be liable for any loss or damage to MISD equipment not caused by City. MISD shall also be liable for any casualty caused by the installation, maintenance, or presence of MISD equipment at the Library.

2. City

- 2.1 City shall allow MISD to install and maintain their equipment at the Library for the purpose of a backup to their primary data center. City shall pay for utilities required for the operation of such MISD equipment.
- 2.2 MISD shall have 24 hour/day 365days/year access to the site. Access outside of normal business hours shall be with escort by City personnel.
- 2.3 City shall be liable for any loss or damage to City equipment not caused by MISD. City shall also be liable to for any casualty caused by the installation, maintenance, or presence of City equipment at the Library.

5. Term

This MOU shall commence on \_\_\_\_\_, 2020 and shall remain in effect until terminated by either party. Termination by either party shall require 30 days written notice to the other party.

6. Binding Effect

This MOU is binding on the parties in accordance with its terms. The parties signing below represent and warrant that they have the legal authority to bind the party for whom they are signing.

7. Governing Law

This MOU shall be governed by the laws of the State of Texas and is performable in Hidalgo County, Texas.

8. Notices

All notices permitted or required under this MOU shall be in writing, and shall be deemed made when delivered to the applicable party at the following addresses either by first class mail postage prepaid, facsimile, or personal delivery:

If to MISD:

McAllen Independent School District  
Attention: Jose A. Gonzalez, Ed.D., Superintendent  
2000 North 23rd Street  
McAllen, Texas 78501

If to City:

City of McAllen  
Attention: City Manager  
1300 Houston  
McAllen, Texas 78501

9. Entire Agreement

This MOU represents the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior negotiations, representations or agreements whether written or oral, regarding the matters described herein. This MOU may be amended only by a written agreement signed by all the Parties.

10. Authority to Bind

The undersigned represent and warrant that they are authorized to sign on behalf of and bind to the terms of this MOU the party each represents.

11. Recitals

The recitals to this Agreement are incorporated herein by reference.

**IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first written above.**

**City of McAllen**

**McAllen Independent School District**

**By: \_\_\_\_\_  
James Darling, Mayor**

**By: \_\_\_\_\_  
Conrado "Ito" Alvarado  
President, Board of Trustees**

**ATTEST**

\_\_\_\_\_  
**City Secretary**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Mark Swaim, Assistant City Attorney**

**APPROVED AS TO FORM:**

*Stephen L. Crain*  
Stephen L. Crain (Nov 19, 2020 16:42 CST)

\_\_\_\_\_  
**Atlas, Hall & Rodriguez, LLP  
By: Stephen L. Crain  
Attorneys for McAllen Independent School District**

**Signature:** *Natalia Goza*

**Email:** natalie.goza@mcallenisd.net

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** *Alejandra Gonzalez (Purchasing)*  
Alejandra Gonzalez (Purchasing) (Dec 9, 2020 13:37 CST)

**SUPERVISOR:** *Cynthia Medrano-Richards*

**Approved for presentation to the Board of Education:**

*J. Alexander*

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**Superintendent of Schools**

## Request for Proposal No. 2021-1008 Imaging Services Awarded Vendor List

VENDOR	CONTACT INFORMATION	AWARD
CASO Document Management 3453 IH 35 N, Suite 215 San Antonio, TX 78219	Contact: Jeff Powell Phone: (210) 222-9124 Email: jeff.powell@caso.com	Recommended
Creative Imaging LLC 1702 So 28th St Edinburg, TX 78542	Contact: Norma Woodard Phone: (956) 287-8883 Fax: (956) 387-8881 Email: norma@creativeimagingrgv.com	Recommended
Lone Star Shredding & Document Storage (3GS, LLC) 1970 W Expressway 83 Mercedes, TX 78570	Contact: Ashley Hernandez Phone: (956) 893-4411 Email: ashley@lonestarshredding.com	Recommended
Records Consultants, Inc. 12829 Wetmore Rd San Antonio, TX 78247	Contact: Chris Coryell Phone: (217) 363-4127 Fax: (877) 366-0776 Toll Free: (877) 363-4127 Email: ccoryell@rcitech.com	Recommended
Scribbles Software 10617 Southern Loop Blvd Pineville, NC 28134	Contact: Michael Knaeble Phone: (714) 420-0022 Email: mike.knaeble@scribsoft.com	Recommended
Stars Information Solutions 12813 Wetmore Rd San Antonio, TX 78247	Contact: Dave Granato Phone: (210) 490-9156 x101 Fax: (210) 490-5753 Email: daveg@starstek.com	Recommended

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** *Jose Silva Jr*  
Jose Silva Jr (Dec 7, 2020 11:33 CST)

**SUPERVISOR:** *Jose Silva Jr*  
Jose Silva Jr (Dec 7, 2020 11:33 CST)

**Approved for presentation to the Board of Education:**

*J. Alexander*

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**Superintendent of Schools**

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** *Jose Silva Jr*  
Jose Silva Jr (Dec 7, 2020 11:35 CST)

**SUPERVISOR:** *Jose Silva Jr*  
Jose Silva Jr (Dec 7, 2020 11:35 CST)

**Approved for presentation to the Board of Education:**

*J. Alexander*

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**Superintendent of Schools**

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBJECT:** Approval of William B. Travis Middle School's Targeted Improvement Plan

**REFERENCE:** Goal 1, Strategy 4 - Student Achievement / Student Focus

**BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:**

For campuses that have received a D in a Domain but have an overall rating of C or higher, Texas Education Code §39A.055(2) requires districts to conduct a public meeting at the campus with the campus principal, the members of the campus-level planning and decision-making committee established under Section 11.251, parents of students attending the campus, and community members residing in the school district to review the campus performance rating and solicit input for the development of the targeted improvement plan. The meeting with the parents and community was held on Tuesday, December 1 and Wednesday, December 2.

William B. Travis Middle School earned a letter "D" Rating in the Student Achievement Domain. The scaled score earned is a 69. Overall Rating earned is a "C" with a scaled score of 78.

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

The Texas Education Code Section 39A.055 requires the submission of the Targeted Improvement Plan for a campus that earned a D in any domain to the school board for approval. In accordance with TEC 39A.057 the plan has been posted on the district's internet website.

**LEGAL REVIEW:**  
None Required.

**BUDGETARY CONSIDERATIONS:**  
None.

**RECOMMENDED BOARD ACTION:** That the Board of Trustees approve the William B. Travis Middle School's Targeted Improvement Plan that was presented in the Public Hearing.

**SUBMITTED BY:** \_\_\_\_\_

For further information contact:  
Name: Bridgette Vieh  
Office: 956-618-6053  
eMail: [bridgette.vieh@mcallsisd.net](mailto:bridgette.vieh@mcallsisd.net)

  
**SUPERVISOR:** Bridgette Vieh (Dec 9, 2020 16:32 CST)

**Approved for presentation to the Board of Education:**



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBJECT:** Approval of District HB3 Board Goals in Early Literacy, Early Math, and CCMR

**REFERENCE:** Goal 1: Student Achievement/Student Focus

**BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:**

In keeping in alignment with the state's 60x30TX goal, which established "checkpoints" along the state's public preK-12th grade educational continuum as follows:

- Sixty percent of all student will the state's "Meets" standard at third grade reading
- Sixty percent of all high school seniors will graduate without the need for remediation and achieve (1) industry-accepted certificate aligned with a living wage job; or (2) enrolling in post-secondary education, or (3) enrolling in the military

HB 3 requires school boards to adopt detailed plans developed by their management teams that achieve goals in two key areas:

- Early childhood literacy and mathematics
- College, career, and military readiness

Requirements of the plan include assigning one district level administrator to oversee the coordination of the plan, set specific, quantifiable, annual goals for five years for the district and each campus, be reviewed at least annually by the board at a public meeting, and post annual report on district and campus websites.

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

The District established a committee led by the Assistant Superintendent for Instructional Services to develop the goals and action plan for each required category. The committee was comprised of directors, coordinators, and community leaders/parents. The committee presented the plan to LEAD McAllen and campus principals.

**LEGAL REVIEW:**

None required.

**BUDGETARY CONSIDERATIONS:**

HB3 and CCMR funds.

**RECOMMENDED BOARD ACTION:**

That the Board of Trustees approve the District HB3 Board Goals in Early Literacy, Early Math, and CCMR.

**SUBMITTED BY:** \_\_\_\_\_

For further information contact:  
Name: Dr. Silvia Ibarra  
Office: (956) 618-6048  
eMail: silvia.ibarra@mcallsisd.net

  
**SUPERVISOR:** Silvia Ibarra (Nov 30, 2020 10:15 CST)

**Approved for presentation to the Board of Education:**



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\_\_\_\_\_  
**Superintendent of Schools**    Nov 30, 2020

MCALLEN ISD  
HB 3 EARLY CHILDHOOD AND CCMR BOARD  
ADOPTED GOALS AND ACTION PLAN

December 14, 2020



# Early Childhood and CCMR Plans

## Why This Matters

In keeping alignment with the state's 60x30TX goal, the School Finance Commission recommended establishing a preK through 12<sup>th</sup> grade goal of at least 60 percent proficiency at TEA's "Meets" standard at two key "checkpoints" along the state's public preK through 12<sup>th</sup> grade educational continuum:

- Sixty percent of all students meeting the state's "Meets" standard at third-grade reading.
- Sixty percent of all high school seniors graduating without the need for remediation and achieving (1) an industry-accepted certificate aligned with a living wage job; or (2) enrolling in post-secondary education' or (3) enrolling in the military.

HB 3 requires school boards to adopt detailed plans developed by their management teams that achieve goals in two key areas:

- Early childhood literacy and mathematics (EC-LM) proficiency
- College, career, and military readiness (CCMR)



**In Statute**

Texas Education Code (TEC), Sections 11.185 and 11.186

## Plan Requirements

### **Both EC-LM and CCMR Plans have the requirements**

- Assign at least one district-level administrator or employee of the regional education service center to oversee the coordination of each plan
- Set specific, quantifiable, annual goals for five years at each campus
- Be reviewed at least annually by the board at a public meeting
- Post annual report on district and campus websites

# Specific Plan Requirements

## EC-LM

- Annual goals for aggregate student growth on 3<sup>rd</sup> grade math and reading assessment
- Annual goals for students in each group evaluated under closing the gaps domain (25 or more students in a group)
- Targeted professional development for classroom teachers in kindergarten through 3<sup>rd</sup> grade for campuses that the board identifies as not meeting the plan's goals and that considers the unique needs of students in bilingual education or special language programs
- Annual goals may be set for students in bilingual or ESL programs
- Targeted professional development for classroom teachers in kindergarten through 3<sup>rd</sup> grade for campuses that the board identifies as not meeting the plan's goals and that considers the unique needs of students in bilingual education or special language programs **(HB 3 requires each teacher and principal in kindergarten through 3<sup>rd</sup> grade to attend Reading Academies by 2021-2022.**

## CCMR

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- Annual goals for aggregate student growth on CCMR readiness indicators evaluated under the student achievement domain
- Annual goals for students in each group evaluated under closing the gaps domain (25 or more students in a group)

## **Specific, quantifiable, goals (measurable goals)**

- Each goal needs to contain a baseline (current state), a target (future state), a population (which students will be impacted), and a deadline (month and year by when the current state will equal the future state).
- Annual targets must be included for each goal in addition to the 5-year deadline target.
- Adopting board outcome goals and progress measures for each goal creates alignment with each plan.

# GOAL 1 – EARLY CHILDHOOD LITERACY

## Early Childhood Literacy Board Outcome Goal

The percent of 3<sup>rd</sup> grade students (all students) that score at meets grade level or above on STAAR Reading will increase from 47% to 60% by June 2024.

### Yearly Target Goals

2020	2021	2022	2023	2024
47%	50%	53%%	57%	60%

### Closing the Gaps Student Groups Yearly Targets

	All Students	African American	Hispanic	White	American Indian	Asian	Pacific Islander	Two or More Races	Special Ed	Eco. Disadv.	Special Ed (Former)	EL	Cont. Enrolled	Non-Cont. Enrolled
2020	47%	50%	46%	59%	*	82%	*	*	32%	41%	52%	41%	48%	46%
2021	50%	52%	48%	61%	*	84%	*	*	34%	43%	54%	43%	50%	48%
2022	53%	54%	50%	63%	*	86%	*	*	36%	45%	56%	45%	52%	50%
2023	57%	56%	52%	65%	*	88%	*	*	38%	47%	58%	47%	54%	52%
2024	60%	58%	54%	67%	*	90%	135*	*	40%	49%	60%	49%	56%	54%

# Early Childhood Literacy Progress Measures

## Early Childhood Literacy Progress Measures

**Progress Measure 1.1: The percent of Pre-Kindergarten students that score on grade level or above in Reading on the Circle diagnostic will increase from 56% to 64% by June 2024.**

Yearly Targets				
2020	2021	2022	2023	2024
56%	58%	60%	62%	64%

**Progress Measure 1.2: The percent of Kindergarten students that score “on track to meet grade level demands” in Reading on the State-approved reading diagnostic will increase from 52% to 60% by June 2024.**

Yearly Targets				
2020	2021	2022	2023	2024
52%	54%	56%	58%	60%

**Progress Measure 1.3: The percent of 1<sup>st</sup> grade students that score “on track to meet grade level demands” in Reading on the State-approved reading diagnostic will increase from 55% to 63% by June 2024.**

Yearly Targets				
2020	2021	2022	2023	2024
55%	57%	59%	61%	63%

**Progress Measure 1.3: The percent of 2<sup>nd</sup> grade students that score “on track to meet grade level demands” in Reading on the State-approved reading diagnostic will increase from 61% to 69% by June 2024.**

Yearly Targets				
2020	2021	2022	2023	2024
61%	63%	65%	67%	69%

# GOAL 2 – EARLY CHILDHOOD MATH

## Early Childhood Math Board Outcome Goal

The percent of 3rd grade students (all students) that score at meets grade level or above on STAAR Math will increase from 53% to 61% by June 2024.

### Yearly Target Goals

2020	2021	2022	2023	2024
53%	55%	57%	59%	61%

### Closing the Gaps Student Groups Yearly Targets

	All Students	African American	Hispanic	White	American Indian	Asian	Pacific Islander	Two or More Races	Special Ed	Eco. Disadv.	Special Ed (Former)	EL	Cont. Enrolled	Non-Cont. Enrolled
2020	53%	50%	53%	59%	*	88%	*	*	36%	48%	57%	47%	55%	47%
2021	55%	52%	55%	61%	*	90%	*	*	38%	50%	59%	49%	57%	49%
2022	57%	54%	57%	63%	*	92%	*	*	40%	52%	61%	51%	59%	51%
2023	59%	56%	59%	65%	*	94%	*	*	42%	54%	63%	53%	61%	53%
2024	61%	58%	61%	67%	*	96%	*	*	44%	56%	65%	55%	63%	55%

# Early Math Progress Measures

## Early Math Progress Measures

**Progress Measure 2.1: The percent of Prek students that score "on track" on the CIRCLEPM math diagnostic will increase from 55% to 70% by June 2024.**

Yearly Targets				
2020	2021	2022	2023	2024
55%	57%	60%	64%	70%

**Progress Measure 2.2: The percent of Kinder students that score "on track" on Go Math EOY will increase from 54% to 66% by June 2024.**

Yearly Targets				
2020	2021	2022	2023	2024
54%	58%	61%	64%	66%

**Progress Measure 2.3: The percent of 1st and 2nd grade students that score "on track" on Go Math EOY will increase from 53% to 67% by June 2024.**

Yearly Targets				
2020	2021	2022	2023	2024
53%	58%	61%	64%	67%

# Goal 3- College, Career, Military Readiness

## CCMR Board Outcome Goal

The percentage of graduates (all students) that meet the criteria for CCMR will increase from 76% to 84% by August 2024.

### Yearly Target Goals

2020	2021	2022	2023	2024
76%	78%	80%	82%	84%

### Closing the Gaps Student Groups Yearly Targets

	All Students	African American	Hispanic	White	American Indian	Asian	Pacific Islander	Two or More Races	Special Ed	Eco. Disadv.	Special Ed (Former)	EL	Cont. Enrolled	Non-Cont. Enrolled
2020	76%	*	75%	86%	*	87%	*	*	82%	71%	*	63%	83%	66%
2021	78%	*	77%	88%	*	89%	*	*	84%	73%	*	65%	85%	68%
2022	80%	*	79%	90%	*	91%	*	*	86%	75%	*	67%	87%	70%
2023	82%	*	81%	92%	*	93%	*	*	88%	77%	*	69%	89%	72%
2024	84%	*	83%	94%	*	95%	139 *	*	90%	79%	*	71%	91%	74%



INDEP

# CCMR Progress Measures

## CCMR Progress Measure 1

The percent of CCMR students that meet the threshold for CCMR Outcomes Bonus for college ready will increase from 62% to 70% by August 2024. (using 18-19 TAPR District College Ready as of May 28)

Yearly Target Goals				
2020	2021	2022	2023	2024
62%	64%	66%	68%	70%

## CCMR Progress Measure 2

The percentage of graduates that meet the criteria for CCMR will increase from 12% to 17% by August 2024 (Approved Industry-Based Certification, IBC).

Yearly Target Goals				
2020	2021	2022	2023	2024
13%	14%	15%	16%	17%

## CCMR Progress Measure 3

The percent of CCMR students that meet the threshold for CCMR Outcomes Bonus for military ready will increase from 1% to 3% by August 2024.

Yearly Target Goals				
2020	2021	2022	2023	2024
1%	1.5%	2.0% 140	2.5%	3.0%

# Overview of District Action Plan

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- Early Literacy Action Plan
- Early Math Action Plan
- CCMR Action Plan

# Questions?



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBJECT:** Approval of Campus HB3 Board Goals in Early Literacy, Early Math, and CCMR

**REFERENCE:** Goal 1: Student Achievement/Student Focus

**BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:**

In keeping in alignment with the state's 60x30TX goal, which established "checkpoints" along the state's public preK-12th grade educational continuum as follows:

- Sixty percent of all student will the state's "Meets" standard at third grade reading
- Sixty percent of all high school seniors will graduate without the need for remediation and achieve (1) industry-accepted certificate aligned with a living wage job; or (2) enrolling in post-secondary education, or (3) enrolling in the military

HB 3 requires school boards to adopt detailed plans developed by their campus teams that achieve goals in two key areas:

- Early childhood literacy and mathematics (elementary)
- College, career, and military readiness (high school)

Requirements of the plan include that each campus develop a plan that sets specific, quantifiable, annual goals for five years for each respective category. Campus plans must be reviewed at least annually by the board at a public meeting and annual report will be posted on campus websites.

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

Each campus established a committee led by the campus principals to develop the goals and action plan for each required category. The committee was comprised of campus administration, teachers, and community leaders/parents. The plan will be posted on the campus website.

**LEGAL REVIEW:**

None required.

**BUDGETARY CONSIDERATIONS:**

HB3 and CCMR funds.

**RECOMMENDED BOARD ACTION:**

That the Board of Trustees approve the Campus HB3 Board Goals in Early Literacy, Early Math, and CCMR.

**SUBMITTED BY:** \_\_\_\_\_

For further information contact:  
Name: Dr. Silvia Ibarra  
Office: (956) 618-6048  
eMail: silvia.ibarra@mcallsisd.net

  
**SUPERVISOR:** Silvia Ibarra (Nov 30, 2020 10:36 CST)

**Approved for presentation to the Board of Education:**



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**Superintendent of Schools**

Nov 30, 2020

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBJECT:** Approval of Amended and Restated Third Amendment to Superintendent's Employment Contract

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

**BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:**

The Third Amendment to Superintendent's Employment Contract was approved by the Board on August 26, 2019.

The Teachers Retirement System (TRS) of Texas is requiring the Third Amendment be clarified for the Superintendent to receive "credible service" for the contribution to the Superintendent's Internal Revenue Code Section 403(b) and 457 plans.

The Board and Superintendent desire to amend and restate the Third Agreement to insert the following in the first sentence of numbered paragraph 3.1 immediately after the words Two Hundred Forty Thousand and no one hundredth Dollars (\$240,000.00); "plus the Salary Deferral Amounts described in numbered paragraph 3.13 of the Employment Contract as amended."

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

The last sentence in paragraph 3.13C of this Third amendment references that..."All contributions made by the District under this Section shall be treated as a salary deferral under the Code and shall be reported as "credible compensation" by the District for purposes of the Teacher Retirement System."

**LEGAL REVIEW:**

Atlas, Hall, and Rodriguez

**BUDGETARY CONSIDERATIONS:**

None.

**RECOMMENDED BOARD ACTION:**

Recommend the Board of Trustees approve the Amended and Restated Third Amendment to Superintendent's Employment Contract.

**SUBMITTED BY:** \_\_\_\_\_

**SUPERVISOR:**  \_\_\_\_\_

For further information contact:

Name: Todd Miller

Office: (956) 618-6005

eMail: todd.miller@mcallenisd.net

**Approved for presentation to the Board of Education:**



**AMENDED AND RESTATED THIRD AMENDMENT TO SUPERINTENDENT'S  
EMPLOYMENT CONTRACT**

This Amended and Restated Third Amendment to Superintendent's Employment Contract is made by and between the Board of Trustees ("Board") of the McAllen Independent School District ("District") and Jose A. Gonzalez, Ed. D. ("Superintendent").

WHEREAS, the Board and Superintendent entered into that certain Third Amendment to Superintendent's Employment Contract effective as of August 26, 2019 (the "Third Amendment").

WHEREAS, the Teachers Retirement System of Texas is requiring the Third Amendment be clarified for the Superintendent to receive "creditable service" for the contribution to the Superintendent's Internal Revenue Code Section 403 (b) and 457 plans.

WHEREAS, the Board and the Superintendent desire to amend and restate the Third Agreement to insert the following in the first sentence of numbered paragraph 3.1 immediately after the words Two Hundred Forty Thousand and no one hundredth Dollars (\$240,000.00): plus, the Salary Deferral Amounts described in numbered paragraph 3.13 of the Employment Contract as amended.

NOW THEREFORE, the Third Amendment to Superintendent's Employment Contact is restated in its entirety as follows:

**AMENDED AND RESTATED THIRD AMENDMENT TO SUPERINTENDENT'S  
EMPLOYMENT CONTRACT**

This Amended and Restated Third Amendment to Employment Contract is made effective as of August 26, 2019 except as to the amendment of numbered paragraph 3.1 herein to add "plus, the salary deferral amounts described in numbered paragraph 3.13 of the Employment Contract as amended" which shall be effective as of December 14, 2020, by and between the BOARD OF TRUSTEES ("Board") of the McALLEN INDEPENDENT SCHOOL DISTRICT ("District") and Jose A. Gonzalez, Ed. D. of Hidalgo County, Texas ("Superintendent").

**W I T N E S S E T H:**

WHEREAS, the District employed Superintendent by that certain contract between the District and the Superintendent dated August 4, 2016 (the "Employment Contract");

WHEREAS, the District by that certain First Amendment to Superintendent's Contract dated September 26, 2017, extended the term of the Employment Contract and increased the annual salary of the Superintendent;

WHEREAS, the District by that certain Second Amendment to Superintendent's Employment Contract dated October 22, 2018, extended the term of the Employment Contract, provided for increases in the Superintendent's compensation equal to increases in compensation of Education Code Chapter 21 full term employees of District, provided for payment of One Thousand and no one hundredths Dollars (\$1,000.00) to defray automobile expenses, provided for a PDA/ cellular telephone allowance of Three Hundred and no one hundredths Dollars (\$300.00) and provided the District shall make the total member contributions on behalf of the Superintendent to the Texas Retirement System ("TRS"); and

WHEREAS, the Board desires to increase certain benefits of the Superintendent and extend the term of the Employment Contract.

NOW, THEREFORE, in accordance with numbered paragraphs 1.1 and 8.2 of the Employment Contract and in consideration of the extension of the term of the Employment Contract, increasing certain benefits in the Employment Contract as specified herein, and other good and valuable consideration, the receipt of which is hereby acknowledged by District and Superintendent, District and Superintendent agree as follows:

1. The first sentence of numbered paragraph 1.1 of the Employment Contract is deleted in its entirety and the following is substituted in lieu thereof:

The Board by and on behalf of the District does hereby employ the Superintendent and the Superintendent does hereby accept employment as Superintendent of Schools for the District for a term eight (8) years commencing on August 5, 2016 and ending on August 4, 2024.

2. Numbered paragraph 3.1 of the Employment Contract is deleted in its entirety and the following is substituted in lieu thereof:

3.1 Salary. The District shall provide the Superintendent an annual salary in the sum of Two Hundred Forty Thousand and no one hundredths Dollars (\$240,000.00) plus, the Salary Deferral Amounts described in numbered paragraph 3.13 of the Employment Contract, as amended, which includes as of the date of this Third Amendment to Superintendent's Employment Contract all Salary Adjustments provided under numbered paragraph 3.2 of the Employment Contract and by prior amendments to the Employment Contract provided to the Superintendent prior to July 1, 2019.

This annual salary shall be paid to the Superintendent in equal installments consistent with the Board's policies.

3. Numbered paragraph 3.13 of the Employment Contract shall be deleted in its entirety and the following shall be substituted in lieu thereof:

3.13 Supplemental Retirement Contribution.

(a) Beginning on September 25, 2019, and continuing regularly thereafter on the District's monthly paydays of each succeeding month through June 30, 2020, provided that the Superintendent executed a salary deferral agreement in accordance with the requirements of Sections 403(b) and/or 457(b) of the Internal Revenue Code (the "Code"), the District shall make a monthly contribution in the amount of Eight Hundred Seventy-Five Dollars (\$875.00) to a tax deferral account designated by Superintendent. At the Superintendent's discretion the payment amount may be allocated to more than a single account, but in such event, the District's total contribution will not be increased.

(b) Thereafter, beginning on the July 2020 District monthly payday, and continuing regularly thereafter on the District's monthly paydays of each succeeding month through the remainder of the term of this Contract and any extension and/or amendment thereto provided that the Superintendent executed a salary deferral agreement in accordance with the requirements of Section 403(b) and/or 457(b) of the Internal Revenue Code ( the "Code"), the District shall make a monthly contribution in the amount of One Thousand Four Hundred Fifty-Eight Dollars and Thirty-Three Cents (\$1,458.33) to a tax deferral account designated by Superintendent. At the Superintendent's discretion the payment amount may be allocated to more than a single account, but in such event, the District's total contribution will not be increased.

(c) The amounts set forth in Subsections a and b of this Section shall be used by the Superintendent as a salary deferral contribution to a plan established under either Section 403(b) or Section 457(b) of the Code. Such plans shall include investments as allowed under Sections 403(b), 403(b)(7) and/or 457(b) of the Code, respectively, at the Superintendent's option. The Superintendent shall be at all times be One Hundred Percent (100%) vested in his account(s) under the 403(b) and/or 457(b) plan(s), in all amounts contributed by the District to such plan(s). All contributions made by the District under this Section shall be treated as a salary deferral

under the Code and shall be reported as “creditable compensation” by the District for purposes of the Teacher Retirement System of Texas.

4. Except for the amendments of the Employment Contract made in numbered paragraphs 1, 2 and 3 of this Third Amendment to Superintendent’s Employment Contract, all provisions of the Employment Contract, as previously amended, and as modified by the Third Amendment to Superintendent’s Employment Contract shall continue in full force and effect.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020 effective as stated in the body of this Amended and Restated Third Amendment to Superintendent’s Employment Contract.

McALLEN INDEPENDENT SCHOOL DISTRICT

By: \_\_\_\_\_  
Conrado “Ito” Alvarado, President  
Board of Trustees

ATTEST:

\_\_\_\_\_  
Tony Forina, Secretary

SUPERINTENDENT

By: \_\_\_\_\_  
Jose A. Gonzalez, Ed. D

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBJECT:** Approval of Revision to 2020-2021 Board Approved Stipends for Project RISE

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

**BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:**

On June 22, 2020 the Board of Trustees approved the authorized stipends for the 2020-2021 school year.

During November 2020, the Region One Project RISE Advisory Council (PRAC) approved the following new Project RISE incentives for 2020-2021:

- 1) Virtual Enhancement Incentive Stipend \$400 - \$1,000
- 2) Instructional Technology Educators Academy \$675 - \$750
- 3) Observation Calibration Incentive Stipend \$500

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

Our goal is to create a K-12 pipeline of highly effective teachers, leaders, and educators to increase ALL student's academic achievement, graduation rates, and college enrollment.

**LEGAL REVIEW:**

None required.

**BUDGETARY CONSIDERATIONS:**

None. Increased stipend amounts are paid from the Region One Project RISE grant.

**RECOMMENDED BOARD ACTION:**

Recommend the Board of Trustees approve revision to 2020-2021 Board Approved Stipends for Project RISE.

**SUBMITTED BY:** \_\_\_\_\_

**SUPERVISOR:**  \_\_\_\_\_

For further information contact:

Name: Todd Miller

Office: (956) 618-6005

eMail: todd.miller@mcallenisd.net

**Approved for presentation to the Board of Education:**



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\_\_\_\_\_  
**Superintendent of Schools** Dec 8, 2020

Project *RISE* Partners,

We commend you for the extraordinary work you are doing by continuing to provide the best support possible to teachers, students, parents, and community during these challenging times. The Project *RISE* Advisory Council (PRAC) convened earlier this week to approve new Project *RISE* Incentives for 2020 – 2021. The following are the additional incentives approved by PRAC based on the review and assessment of the current challenges faced by educators.

Incentive:	Eligible Staff:	Rationale:	Stipend Amount:	Stipend to be Paid:
<b>Virtual Enhancement Incentive Stipend</b>	All 2020 – 2021 eligible Project RISE Professional Educators identified in PBC Models	<ul style="list-style-type: none"> <li>• Incentivize educators who have invested both time and resources to respond to students’ needs under the current situation.</li> <li>• Compensate for lack of School Wide Student Performance for the 2019-2020 school year</li> <li>• 2019-2020 payouts did not include the School-Wide Growth due to cancellation of state assessment as a result of COVID-19.</li> </ul>	<b>\$1,000 – Teachers</b>  <b>\$800 – Administrators (Principals, Asst. Principals; Deans of Instruction)</b>  <b>\$400 – Other Educators</b>	<u><b>2 installments</b></u>  Fall 2020 to be paid in January 2021;  Spring 2021 to be paid in Spring 2021 (Spring Installment is dependent upon instruction delivery).
<b>Instructional Technology for Educators Academy</b>	All 2020 – 2021 eligible Project RISE Professional Educators identified in PBC Models	<ul style="list-style-type: none"> <li>• An individualized PD plan to prepare educators to meet student learning goals through goals through effective utilization of technology for teaching.</li> </ul>	<b>\$750 – PDP 1</b> <b>\$675 – PDP - 2</b> <b>\$675 – PDP 3</b>  <i>*Dependent on the number of course completions per PDP.</i>	Educators will be REQUIRED to complete all sessions included in the PDP to be eligible to receive incentive stipend.  The amount paid will be determined in Spring 2021 once PDP is completed.
<b>Observation Calibration Incentive Stipend</b>	Campus Administrators (Principal, Asst. Principals, and Deans of Instruction)	<ul style="list-style-type: none"> <li>• To build capacity and sustainability of an Observation Calibration Protocol that will ensure campus administration calibrate and have Inter-Rater Reliability.</li> </ul>	<b>\$500</b>	Stipend to be paid in May 2021 for 2 Observation Calibrations

We thank you in advance for continuing our grant partnership for the 2020 – 2021 school year. More information will be forthcoming for the approved incentives mentioned above. Stay safe!

Respectfully,  
 Dr. Socorro Espinoza, Project RISE Director

**McALLEN INDEPENDENT SCHOOL DISTRICT**  
**2020-2021 (Proposed Revision Dec, 14, 2020)**  
**GRANT FUNDED STIPENDS**

**PROJECT RISE**

Position	# of Positions	Yearly Stipend
Grant Manager	1	\$2,000
Recruitment Bonus	TBD	\$2,000
Master Teacher	3	\$7,000
<b>Virtual Enhancement Incentive</b>	<b>TBD</b>	<b>\$400 - \$1,000</b>
<b>Instructional Technology for Educators Academy</b>	<b>TBD</b>	<b>\$675 - \$750</b>
<b>Observation Calibration Incentive</b>	<b>TBD</b>	<b>\$500</b>

Note: Eligibility for stipend must meet criteria as set forth in the Grant.

Fund 193/211

**McALLEN INDEPENDENT SCHOOL DISTRICT**  
**2020-2021**  
**STATE & FEDERAL PROGRAMS**

Position	# of Positions	Yearly Stipend
Social Worker	10	\$1,000

Fund 193

**Title I, Part A**

Position	# of Positions	Yearly Stipend
Title I ELA Coach	1	\$10,000
Title I Math Coach	1	\$10,000

Fund 211

**Title II, Part A**

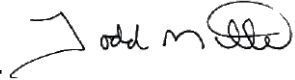
Position	# of Positions	Yearly Stipend
Mentors of New Teachers (Years 0-3)	TBD	\$1,000

Fund 255

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** Andres Silva

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



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**Superintendent of Schools**

# McAllen Independent School District

RFP # 2021-134 Specific and Aggregate Stop Loss  
Evaluation Matrix

No.	Criteria	Max. Pts. 100	Gerber Life Ins. as submitted by Brokerage Service 12/15 87.50	Sirius American Insurance as submitted by Norland, Inc. 12/15 84.90	American National Insurance as submitted by Norland, Inc. 12/15 77.31	American National Life Insurance as submitted by Dallas Risk Management 12/15 90.40
	<b>Total Points</b>	<b>100</b>	<b>87.50</b>	<b>84.90</b>	<b>77.31</b>	<b>90.40</b>
	<b>Ranking</b>					
<b>1</b>	<b>Price</b>	<b>65</b>	<b>65.00</b>	<b>56.90</b>	<b>56.31</b>	<b>64.40</b>
	<i>Year 1 Specific &amp; Aggregate</i>		<i>\$1,091,133</i>	<i>\$1,246,385</i>	<i>\$1,259,505</i>	<i>\$1,101,338</i>
<b>2</b>	<b>Reputation of the vendor and of the vendor's goods or services;</b>	<b>5</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
	<i>AM Best Rating Max pts (5pts): A+ = 5pts , A- to A = 3 pts, B+ below = 0 pts</i>		<i>A</i>	<i>A-</i>	<i>A</i>	<i>A</i>
<b>3</b>	<b>The quality of the vendor's goods or services</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>
	<i>Proposal includes 120% corridor (5 pts): Yes = 5 pts, No = 0 pts</i>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>
			<i>yes</i>	<i>yes</i>	<i>yes</i>	<i>yes</i>
	<i>Proposal includes coverage for Medical &amp; Rx (5 pts): Yes = 5 pts, No = 0 pts</i>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>
			<i>yes</i>	<i>yes</i>	<i>yes</i>	<i>yes</i>
<b>4</b>	<b>The extent to which the goods or services meet District's needs</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>
	<i>Advanced Funding included (5 pts): Yes = 5 pts, No = 0 pts</i>		<i>yes</i>	<i>yes</i>	<i>yes</i>	<i>yes</i>
<b>5</b>	<b>Past Relationship with District</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<i>Max pts (2 pts): Yes = 2 pts, No = 0 pts</i>		<i>yes</i>	<i>no</i>	<i>no</i>	<i>no</i>
<b>6</b>	<b>HUB</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>7</b>	<b>Total long-term cost to the district to acquire the vendor's goods or services;</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>8</b>	<b>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</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>3</b>
	<i>Texas =3 pts; Out of State Vendor = 0 pts</i>		<i>Oklahoma City, OK</i>	<i>Des Moines, IA</i>	<i>Galveston, Texas</i>	<i>Galveston, Texas</i>
<b>9</b>	<b>Any other relevant factor specifically listed in the request for bids or proposals.</b>	<b>10</b>	<b>3</b>	<b>10</b>	<b>0</b>	<b>5</b>
	<i>Lasering</i>		<i>\$ 1,000,000.00</i>	<i>\$ -</i>	<i>no response</i>	<i>\$ 500,000.00</i>

# McAllen Independent School District

Summary of Comparative Cost  
Best and Final

RFP # 2021-134 Stop Loss Insurance  
Review Date: December 1, 2020

<u>General</u>	Current	Option 1	Option 2	Option 3	Option 4
Insurance Carrier	<b>Gerber Life Ins.</b>	<b>Gerber Life Ins.</b>	<b>American National Life</b>	<b>Sirius American Insurance</b>	<b>American National Insurance</b>
Company	Brokerage Services	Brokerage Services	Dallas Risk Management	Norland Inc	Norland Inc
MGU	UnityRe	UnityRe	American National Life	Sirius American Insurance	American National Insurance
<b>Stop Loss Coverage</b>	<b>Medical &amp; RX</b>	<b>Medical &amp; RX</b>	<b>Medical &amp; RX</b>	<b>Medical &amp; RX</b>	<b>Medical &amp; RX</b>
Contract Basis	12/15	12/15	12/15	12/15	12/15
Specific Annual Deductible	\$ 330,000	\$ 330,000	\$ 330,000	\$ 330,000	\$ 330,000
Max. Annual Reimbursement	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Max. Lifetime Reimbursement	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Composite Rate	\$ 29.96	\$ 28.45	\$ 29.08	\$ 32.21	\$ 33.32
Aggregate Rate	\$ 1.49	\$ 1.49	\$ 1.14	\$ 1.99	\$ 1.24
Combined Rate	\$ 31.45	\$ 29.94	\$ 30.22	\$ 34.20	\$ 34.56
<b>Total Annual Stop Loss Premium</b>	<b>\$ 1,133,710</b>	<b>\$ 1,091,133</b>	<b>\$ 1,101,338</b>	<b>\$ 1,246,385</b>	<b>\$ 1,259,505</b>
	<b>Medical &amp; RX</b>	<b>Medical &amp; RX</b>	<b>Medical &amp; RX</b>	<b>Medical &amp; RX</b>	<b>Medical &amp; RX</b>
Aggregate Contract Basis	15/15	12/15	12/15	12/15	12/15
Aggregate Corridor	120%	120%	120%	120%	120%
Composite Rate	\$ 767.87	\$ 714.86	\$ 802.34	\$ 767.88	\$ 762.22
<b>Maximum Claim Liability</b>	<b>\$ 27,680,178</b>	<b>\$ 26,052,358</b>	<b>\$ 29,240,479</b>	<b>\$ 27,984,619</b>	<b>\$ 27,778,346</b>
<b>Cost Increase +/-</b>		<b>\$ (42,577)</b>	<b>\$ (32,372)</b>	<b>\$ 112,675</b>	<b>\$ 125,795</b>
<b>Increase % +/-</b>		<b>-3.76%</b>	<b>-2.86%</b>	<b>9.94%</b>	<b>11.10%</b>

**Notes:**

AM Best Rating: A	AM Best Rating: A	AM Best Rating: A-	AM Best Rating: A
Advanced Funding	Advanced Funding	Advanced Funding	Advanced Funding
Rates are firm and final	Rates are firm and final	Rates are firm and final	
(1) laser confirmed \$1,000,000	(1) laser confirmed \$500,000	Confirmed no lasers	

**Comments:** Current Census **3250**  
 Premiums based on census of **3037** excluding 213 members from Alternate Plan

# Memorandum

**To:** Alejandra Gonzalez, Director of Purchasing

**CC:** Andres Silva, Director of Employee Benefits & Safety and Risk Management

**From:** Roger Garza, LUTF-LHIC

**Date:** December 7, 2020

**Re:** Recommendation: RFP # 2021-134 Stop Loss Insurance

On November 4, 2020, the District solicited proposals for Medical & Rx Stop Loss Insurance. The agreement with the current incumbent, Gerber Life, will expire on December 31, 2020. In lieu of accepting the renewal and risk the possibility of a rate increase with no options to solicit, a Request for Proposals (RFP'S) were advertised by utilizing local and national media outlets. The requested due date of November 30, 2020 with proposals to be submitted electronically to the Districts' Purchasing Department. We received and evaluated four (4) proposal with multiple contract options of 12/15 & 12/18 and \$330,000 for specific and aggregate insurance. Currently, the District maintains a specific deductible of \$330,000 with contractual terms of 12/15. The current premium is \$1,133,710 based on current enrollment. The District requested a 12/15 contract terms with a \$330,000 specific deductible.

The District requested Best and Final offers from three (3) of the proposers, one did not meet minimum RFP specifications.

**Brokerage Services (Gerber Life Insurance):** Brokerage Services submitted a proposal with (1) one option:

**Option 1:** includes a contract basis of 12/15, specific deductible of \$330,000 and a maximum claim liability of \$26,052,358 with a premium of \$1,091,133 a decrease to current premium of \$42,577 (3.76%). The option includes one (1) laser deductible of \$1,000,000.

**Dallas Risk Management (American National Life):** Dallas Risk Management submitted a proposal with one (1) option:

**Option 2:** includes a contract basis of 12/15, specific deductible of \$330,000 and a maximum claim liability of \$29,240,479 with a premium of \$1,101,338 a decrease to current premium of \$32,372 (2.86%). The option includes (1) laser deductible of \$500,000.

**Norland, Inc.** submitted a proposal with (2) two options:

**Option 3**

**Sirius American Insurance** includes a contract basis of 12/15, specific deductible of \$330,000 and a maximum claim liability of \$27,984,619 with a premium of \$1,246,385 an increase to current premium of \$112,675, 9.94%. The option includes no laser deductible.

**Option 4**

**American National Insurance:** includes a contract basis of 12/15, specific deductible of \$330,000 and a maximum claim liability of \$27,778,346 with a premium of \$1,259,505 an increase to current premium of \$125,795, 11.10%. The option includes no laser deductible.

<b>Company Name</b>	<b>Specific Deductible Contract Basis</b>	<b>Annual Premium</b>	<b>Maximum Claim Liability</b>
<b><u>Option 1</u></b> Gerber Life (Brokerage Services)	\$330,000 12/15	\$1,091,133	\$26,052,358
<b><u>Option 2</u></b> American National Life (Dallas Risk Management)	\$330,000 12/15	\$1,101,338	\$29,240,479
<b><u>Option 3</u></b> Sirius American Insurance (Norland, Inc.)	\$330,000 12/15	\$1,246,385	\$27,984,619
<b><u>Option 4</u></b> American National Insurance (Norland, Inc.)	\$330,000 12/15	\$1,259,505	\$27,778,346

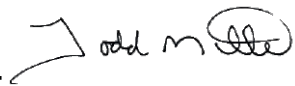
**RECOMMENDATION:**

After careful consideration of the proposed offers, we recommend that the district accept the offer provided by American National Life (Option 2) as submitted by Dallas Risk Management for plan year 2021. The recommended offer will have a specific deductible of \$330,000 with a contract basis of 12/15 and specific and aggregate coverage for both Medical & Rx and an annual premium of \$1,101,338.

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** \_\_\_\_\_

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**





**A RESOLUTION REQUESTING GOVERNOR ABBOTT TO INCLUDE PUBLIC SCHOOL DISTRICT PERSONNEL IN THE OFFICIAL EXPERT VACCINE ALLOTMENT PANEL'S DEFINITION OF FRONTLINE WORKERS**

**WHEREAS**, the McAllen Independent School District Board of Trustees recognizes that the United States Government, the State of Texas and Local Health Authorities have declared a disaster and emergency regarding Coronavirus/COVID-19 (hereafter "COVID-19") and its spread across the State and Nation and continue to extend these declarations;

**WHEREAS**, the Board recognizes that COVID-19 is an unforeseen and unavoidable emergency of urgent public necessity, that the World Health Organization has declared COVID-19 a pandemic, and that additional emergency declarations have been and will continue to be issued in the coming days, weeks and months;

**WHEREAS**, the Public Schools of the State of Texas impact millions of students and personnel and have a profound effect on educational, social, economic and public health issues and are integral to the general welfare of the State;

**WHEREAS**, the Public Schools of the State of Texas are charged with the task of caring for, educating, nourishing and providing extra-curricular activities to millions of Texas students 5 days a week thus allowing a vast number of parents the opportunity to engage in gainful employment to support and nurture wholesome home environments for our Texas students;

**WHEREAS**, the Public Schools of the State of Texas are dependent on dedicated school personnel from administrators, teachers, educational and professional specialists to clerical, maintenance, transportation, child nutrition, security and other support staff to conduct the day to day operations of our schools and ensure the mission goal of the efficient delivery of instruction;

**WHEREAS**, although our District and our personnel as well Districts across the State have responded heroically to the challenges brought forth by COVID-19 regarding the delivery of instruction, issues persist in the quality of learning especially among students that would most benefit from live, face to face instruction;

**WHEREAS**, the Texas Department of Health recently reported 31,678 students and 18,742 school employees tested positive for COVID-19 and the Board, having a substantial public interest in protecting the health and safety of its students, staff, and community, therefore, desires to ensure that the School District and community be prepared to the fullest extent possible in light of COVID-19;

**WHEREAS**, a substantial number of School District employees are more susceptible to complications and/or death from COVID-19 due to age or pre-existing medical conditions;

**WHEREAS**, it appears that through the significant efforts of the public and private sectors, effective vaccines may soon be available to administer to our citizens in an effort to thwart the spread of the COVID-19 pandemic and return our lives to a semblance of normality and stability;

**WHEREAS**, the State of Texas convened a team of external and internal subject-matter experts into the Expert Vaccine Allocation Panel (EVAP) to develop vaccine allocation strategies as recommendations to the Texas Commissioner of Health including guiding principles for the equitable distribution of the vaccine across the State which appropriately prioritize making vaccines available to **FRONTLINE WORKERS** and vulnerable populations;

**WHEREAS**, in order to balance the educational, health and economic issues described above, the Governor of Texas, the Texas Commissioner of Education and the Texas Education Agency prescribed guidelines and directives to Public School Districts to currently make available live instruction to those students who request it and to continue to aggressively phase in live instruction for all students in the near future;

**WHEREAS**, the Board and Administration are following advice and directives from federal, state and local authorities in responding to COVID-19;

**WHEREAS**, Texas Public School District personnel are essential to the day to day operations of a District as described above and critical for the resumption of live, face to face instruction;

**WHEREAS**, Mr. Ruben Cortez, Jr., District 2 Member of the State Board of Education recently requested of the Governor Abbott that School District employees State wide be defined as **FRONTLINE WORKERS** for purposes of vaccine allocation and the Board wishes to join Mr. Cortez and support him in his request to the Governor.

**IT IS THEREFORE RESOLVED THAT** the Board of Trustees finds a substantial public purpose exists in requesting of the Governor and EVAP that all Public School District personnel be designated **FRONTLINE WORKERS** as that term is defined by EVAP and as essential **FRONTLINE WORKERS** be given appropriate priority in the State wide administration of the COVID-19 vaccine as it becomes available.

The above Resolution is passed and adopted this \_\_\_\_ day of December, 2020 by the Board of Trustees.

**APPROVED:**

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_


Conrado Alvarado  
President, Board of Trustees

Tony Forina  
Secretary, Board of Trustees

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** 

**SUPERVISOR:**   
Arely Benavides (Dec 10, 2020 17:04 CST)

**Approved for presentation to the Board of Education:**



161 \_\_\_\_\_  
**Superintendent of Schools**

Open Date/Time:  
 Wednesday, November 18, 2020  
 4:00 P.M.

RFP CMAR 2021-137 Veterans Memorial Stadium New Press Box

No.	Criteria	Max. Pts. 100	D. Wilson Construction Company	Davila Construction, Inc.	ECON Enriquez Construction Group LLC	NM Contracting, LLC	Noble Texas Builders, LLC
			McAllen, TX 78501	McAllen, TX 78501	Edinburg, TX 78539	McAllen, TX 78501	La Feria TX 78559
	<b>Total Points</b>	<b>100</b>	<b>97.2</b>	<b>90.0</b>	<b>99.0</b>	<b>49.8</b>	<b>97.2</b>
	<b>Ranking</b>		<b>3</b>	<b>4</b>	<b>1</b>	<b>5</b>	<b>2</b>
<b>1</b>	<b>Price</b>	<b>5</b>	<b>3.17</b>	<b>4.45</b>	<b>5</b>	<b>4.22</b>	<b>3.89</b>
	Estimated CMaRisk Cost (proposed fee x proposed construction budget, plus general conditions)	5	\$ 450,000.00	\$ 320,000.00	\$ 285,000.00	\$ 337,500.00	\$ 366,300.00
	Fee (A.1) (based on \$3M budget)		5.00%	6.25%	3.70%	3.50%	3.75%
	General Conditions Cost (A.2) (based on \$3M budget)		9.50%	3.75%	5.30%	7.50%	7.96%
	Pre-Construction Services		\$ 15,000.00	\$ 20,000.00	\$ 15,000.00	\$ 7,500.00	\$ 15,000.00
<b>2</b>	<b>Reputation of the vendor and of the vendor's goods or services;</b>	<b>30</b>	<b>29</b>	<b>25</b>	<b>29</b>	<b>0</b>	<b>28.33</b>
	Overall reputation for managing schedule, budget, scope Changes (part 1)	15	14.50	13	14.67	0	13.67
	Overall reputation for punch list, close out, and warranty (part 2)	15	14.50	12	14.33	0	14.67
<b>3</b>	<b>The quality of the vendor's goods or services</b>	<b>35</b>	<b>35</b>	<b>30.6</b>	<b>35</b>	<b>30.6</b>	<b>35</b>
	Personnel (#7)	20	20	15.56	20	15.56	20
	Quality of construction & relationship with local subcontractors	15	15	15	15	15	15
<b>4</b>	<b>The extent to which the goods or services meet District's needs</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>15</b>	<b>30</b>
	Construction Manager at Risk experience (# 6.1a/4.1/4.2) 15pts	15	15	15	15	0	15
	# of projects (0-2 projects = 7.5; 3-5 projects = 15 pts)		5	5	4	0	5
	Previous experience w/similar projects (#4.2) 5pts; Experience on similar projects within the past 5 years (#4.1) 10 pts <b>Total = 15pts</b>	15	15	15	15	15	15
	# of projects (Non-CMAR) (0-2 projects = 7.5 pts; 3-5 projects = 15 pts)		5	5	3	5	5
<b>5</b>	<b>Past Relationship with District</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>6</b>	<b>HUB</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>7</b>	<b>Total long-term cost to the district to acquire the vendor's goods or services;</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>8</b>	<b>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</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>9</b>	<b>Any other relevant factor specifically listed in the request for bids or proposals.</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

McALLEN INDEPENDENT SCHOOL DISTRICT  
2000 North 23<sup>rd</sup> Street  
McAllen, Texas 78501

and the Construction Manager:  
(Name, legal status and address)

for the following Project:  
(Name and address or location)

2021-137 Veterans Memorial Stadium New Press Box

The Architect:  
(Name, legal status and address)

The Owner's Designated Representative:  
(Name, address and other information)

The Construction Manager's Designated Representative:  
(Name, address and other information)

### **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.

AIA Document A201<sup>™</sup>-2007, 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<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.



The Architect's Designated Representative:  
*(Name, address and other information)*



The Owner and Construction Manager agree as follows.



## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
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- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
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- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
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### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

#### EXHIBIT A-1 PAYMENT AND PERFORMANCE BONDS

### EXHIBIT B AIA DOCUMENT A201-2007, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, AS REVISED

### EXHIBIT C CONSTRUCTION MANAGER'S INSURANCE CERTIFICATES

### EXHIBIT D INITIAL INFORMATION

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions) as amended, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager, the request for proposals, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. Any reference to AIA Document A201™-2007, General Conditions of the Contract for Construction, the A201 or the A201-2007 in this Agreement shall be construed as the AIA Document A201-2007 as amended for this Project, which is attached to this AIA Document A133-2009 (the "A133") as **Exhibit B**. Initial information concerning the Project is attached hereto as Exhibit D, but to the extent of any conflict between **Exhibit D** and the rest of this Contract, the terms in the rest of this Contract shall control.

§ 1.1.1 In the event of conflict, terms and conditions shall take precedence as specified in the A201. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 1.1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price (sometimes referred to herein as "GMP") to agree to an extension to the date of Substantial or Final Completion, or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: \_\_\_\_\_, or successor.

### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees as set forth in the Contract Documents; to furnish efficient construction administration, management services and supervision, to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction, which shall satisfy Owner's time requirements; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.2.1 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 2.1.2.2 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising

from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

**§ 2.1.3 Project Schedule.** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; dates of Substantial Completion and Final Completion, and the occupancy requirements of the Owner. If updated Project schedules indicate that previously-approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

#### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

#### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

#### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Section Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of

any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives and potential cost savings shall be subject to the review and approval of the Architect, Owner and the Owner's professional consultants. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by, or that reasonably should have been discovered by, or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents. Without limiting the generality of the foregoing, the Construction Manager acknowledges and agrees to comply with the requirements of Texas Government Code §2269.255 and §2269.256 concerning publicly advertising for bids and proposals from trade contractors or subcontractors and the review and availability of same.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, the general conditions and the Construction Manager's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, general conditions, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall be not more than 30 days after the date of Substantial Completion.

The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

*(Paragraph deleted)*

**§ 2.2.6.** The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price Amendment, the Owner shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect promptly and in writing of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any taxes from which Owner is exempt.

§ 2.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the GMP Amendment.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 The date of commencement of the Work shall mean the date of commencement of the Construction Phase as provided in Section 8.1.2 of A201-2007.

*(Paragraph deleted)*

### § 2.3.2 Administration

§ 2.3.2.1 The Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors for the performance of all major elements of the Work. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which proposals will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.

### § 2.3.2.2

Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 2.3.2.2.1 The Construction Manager shall include the following specific notices in the information to proposers:

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

- 4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 2.3.2.2 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing at the time the Construction Manager makes such recommendation of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors may discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment by Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007, including the Owner's occupancy requirements. The Construction Manager shall provide regular monitoring and shall update the construction schedule at least monthly as the Work progresses.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The reports shall:

- .1 Include information concerning both the entire Project and each Subcontractor's portion.
- .2 Identify variances between scheduled and probable completion dates, and recommend action required to meet scheduled completion dates.
- .3 Review the construction schedule for portions of the Project not started or incomplete, and recommend to the Owner alternate procedures or adjustments to meet the scheduled completion dates.
- .4 Provide summary reports for each construction schedule update, and identify any significant scheduling issues with recommended corrective action.
- .5 Document any pending Change Orders and the risks associated with delayed responses.

The Construction Manager shall also keep, and make available to the Owner and Architect at any time, including at the meetings referenced in Section 2.3.2.5, a daily log containing a record for each day of weather, Subcontractors working at the site, Work accomplished, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The information in this log does not constitute notice of a potential or actual Claim to the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above. The Construction Manager shall include a Project status report in a format reasonably acceptable to the Owner, listing (1) all pending and approved Change Orders and (2) expenditures to date.

§ 2.3.2.9 The Construction Manager shall review and inspect the Work of the Subcontractors on a regular basis for defects and deficiencies in their Work and for conformance with the Drawings, Specifications and other Contract Documents, and shall stop the Work of Subcontractors if necessary. The Construction Manager shall provide notification at regularly scheduled progress meetings of any major defects or deficiencies and recommended remedial action.

§ 2.3.2.10 The Construction Manager shall maintain a record copy of all:

- .1 subcontracts, purchase orders, Drawings, marked to record all changes made during construction, Specifications, addenda, Change Orders, and other Modifications;
- .2 shop drawings;
- .3 product data;
- .4 samples;
- .5 submittals;
- .6 inspection reports;
- .7 purchases;
- .8 materials and equipment
- .9 applicable handbooks;
- .10 maintenance and operating manuals and instructions; and
- .11 any other related documents and revisions which arise out of subcontracts or Work.

These records shall be available to the Owner upon request, and, at completion of the Project, delivered to the Owner in good order.

§ 2.3.2.11 The Construction Manager shall assist the Owner by providing a training session for the Owner's personnel in the initial use, operation and maintenance of the building mechanical, electrical and plumbing systems as installed or renovated as part of the Work.

§ 2.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.
- .2 The special shoring requirements, if any, of the Owner.
- .3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 2.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.6 Per Texas Government Code, § 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Sections 2.3.2.1 and 6.2.1 herein.

## ARTICLE 3 OWNER'S RESPONSIBILITIES

### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

*(Paragraph deleted)*

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs, including the Owner's Contingency as provided in Section 2.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law or as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys as provided in Section 2.2.3 of AIA A201-2007 describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 3.1.4.3 Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work and are requested by the Architect or Construction Manager and approved by the Owner, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

### § 3.2 Owner's Designated Representative

Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within Owner's contingency. The Board designates as its authorized representatives, the following individuals:

\_\_\_\_\_.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Construction Manager shall furnish all legal, insurance and accounting services that Construction Manager may determine to be necessary to meet Construction Manager's needs and interests.

**§ 3.3 Architect**

The Construction Manager’s services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Construction Manager upon request.

**§ 3.4 Inspection and Testing**

Pursuant to Texas Government Code § 2269.058, the Owner shall provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the Work by Owner.

**ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 4.1 Compensation**

**§ 4.1.1** For the Construction Manager’s Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

**§ 4.1.2** For the Construction Manager’s Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

[Redacted]

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within  (  ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services may be equitably adjusted.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager’s personnel providing Preconstruction Phase services on the Project and the Construction Manager’s costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**§ 4.2 Payments**

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 4.2.2** Payments are due and payable within 45 days of receipt of the Construction Manager’s invoice and certification for payment for the Architect. Amounts unpaid more than forty-five (45) days after certification for payment by the Architect shall bear interest in accordance with Texas Government Code Section 2251.025.

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 5.1** For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee plus the general conditions, the total of which shall not exceed the Guaranteed Maximum Price.

**§ 5.1.1** The Construction Manager’s Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)*

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum. No Construction Manager’s fee shall be paid on the Construction Manager’s Contingency or the Owner’s Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in § 2.3.2.1.

[Redacted]

**§ 5.1.2** The method of adjustment of the Construction Manager’s Fee for changes in the Work: Only by agreement of Owner’s Board of Trustees.

[Redacted]

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: See Section 7.14 of the A201.

§ 5.1.4 **GENERAL CONDITIONS** All charges, if any, for general conditions (costs to be reimbursed) shall be delineated separately in the Guaranteed Maximum Price Amendment, and may include only the following: on-site Project Manager; on-site Project and Site Superintendents; on-site Assistant Superintendents; minor work that may be included in the general conditions as allowed by Texas Government Code § 2269.255; office trailer expenses; on-site sanitary facilities; project sign; safety/first aid; on-site technology; temporary water and power; project site office supplies and office equipment; plan reproduction; construction photographs; dumpsters; final clean-up; equipment rental; fuel; small tools; and items described in more detail below.

§ 5.1.4.1 Rental rates for Construction Manager-owned equipment shall be subject to the Owner's prior approval and shall not exceed the standard rate paid at the place of the Project.

§ 5.1.4.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

§ 5.1.4.3 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries, for Construction Manager's on-site Project Manager, on-site Project and Site Superintendents, on-site Assistant Superintendents, and Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

§ 5.1.4.4 Actual rental charges for temporary facilities, machinery, equipment and hand tools not included in Section 6.5.1 and not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal.

§ 5.1.4.5 The general conditions shall not include the following: all reimbursement for profit; indirect costs; all telephone bills for all personnel; all facsimile charges; home office personnel and benefits assigned to the Project; home office overhead and expenses; home office personnel relocation; all home office accounting, audit, legal and data processing fees and expenses; and all travel, meals and lodging.

§ 5.1.5 Unit prices, if any, will be included in the GMP Amendment. Such prices are only applicable in the event Owner opts to increase or decrease the number of required components after acceptance of the GMP Amendment

*(Table deleted)*

## § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time, as approved by Owner's Board of Trustees. To the extent the Contract Sum exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Dates of Substantial Completion and Final Completion shall be subject to adjustment as provided in the Contract Documents.

### § 5.3 Changes in the Work

§ 5.3.1 The Owner, with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect, after having obtained the Owner's approval, may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. Either the Construction Manager or the Owner, as appropriate, may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Increases or decreases, if any to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean the following costs necessarily incurred by the Construction Manager in the proper performance of the Work, except those costs compensated as general conditions under Section 5.1.4 above. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. Cost of the Work that exceeds the Guaranteed Maximum Price shall be borne by the Construction Manager.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.257.

*(Paragraphs deleted)*

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, to the extent not compensated under general conditions.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such

costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3, to the extent not compensated under general conditions.

*(Paragraph deleted)*

### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per § 2.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

**§ 6.3.1** The Construction Manager shall maintain a procedure for the review, processing and payment of applications by the Subcontractors for progress and final payments, all in accordance with the terms and conditions of the Contract Documents. The Construction Manager shall verify the completeness of all applications for payment and assemble and check all supporting documentation required by the Contract Documents or by the subcontracts with respect to each Application for Payment, including all lien waivers and releases.

### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and Owner-approved storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold or returned by the Construction Manager. Any amounts realized from such sales or returns shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

*(Paragraph deleted)*

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal, other than final clean-up.

*(Paragraphs deleted)*

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

### **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority for materials that are related to the Work, but not incorporated in the Work, and for which the Construction Manager is liable and Owner is not exempt.

**§ 6.6.3** Fees and assessments for the building permit and for other Project-specific permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required of the Construction Manager by the Contract Documents and paid by the Construction Manager, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

*(Paragraph deleted)*

§ 6.6.7 Deposits lost for causes directly resulting from the Owner’s action or decisions.

*(Paragraphs deleted)*

### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

*(Paragraph deleted)*

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8 or other provision of or amendments to this Agreement. However, notwithstanding anything in Article 6 to the contrary, no reimbursable cost or expense will be paid again if it is also included and paid in any general conditions amount submitted by Construction Manager.

### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .5 Costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase or during the warranty period provided for in Section 12.2 of the A201-2007;
- .9 Delay damages or claims;
- .10 Storage costs, unless with prior written Owner approval;
- .11 All costs intentionally deleted from Section 6 above, including all subsections;
- .12 All items included in either general conditions under Section 5.1.4 above, or the Construction Manager’s Fee in Section 5.1.1 above.
- .13 Overtime wages, unless prior written approval is obtained from the Owner;
- .14 Penalties and fines imposed by a governmental entity;
- .15 Liquidated damages;

- .16 Telephone, postage, express delivery, facsimile, reproduction and similar office expenses of the site office, unless such expense is expressly included in Section 6.1 to 6.7 above; and
- .17 Legal consultant or Claims-related expenses.

### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials and equipment connected with the Work and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall notify the Owner in a timely manner of the opportunity for any cash discounts, and of any trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2, 2.3.2.2.1, 2.3.2.2.2, and 2.3.2.3. If the Owner fails or refuses to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2, 2.3.2.2.1, 2.3.2.2.2, and 2.3.2.3.

### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy (including electronically), the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, ledgers, computerized records, daily reports, invoices of Subcontractors and suppliers, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract or any Claim. The Construction Manager shall preserve these records for a period of twelve years after Final Completion, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment, in form acceptable to the Owner, submitted to the Architect and Owner in compliance with the Contract Documents by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. The submission of an Application for Payment constitutes a certification that the Work is current on the construction schedule, unless otherwise specifically noted on such Application for Payment.

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

**§ 7.1.3** The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within forty-five (45) days, if Owner's Board of Trustees meets once a month, or thirty (30) days, if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

**§ 7.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment.

**§ 7.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values less any unused Owner's contingency and unused Construction Manager's contingency, shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** 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. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Article 7 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of  percent (%) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;

- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors or other representatives in such documentation;
- .7 Subtract amounts, if any, for which the Architect or the Owner has withheld or nullified a Certificate for Payment or the Owner has withheld payment as provided in Section 9.5 of AIA Document A201-2007; and
- .8 Subtract retainage of five percent (5%) if 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) of the remaining amount, including the Construction Manager's Fee, of the progress payment.
- .9 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:
  - .1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007, as amended.
  - .2 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 due Construction Manager at any time.
  - .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

**§ 7.1.8** The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

**§ 7.1.9** Except with the Owner's prior written approval or as otherwise provided in Section 9.3.2 of the AIA Document A201-2007, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 7.1.10** In submitting the Construction Manager's Applications for Payment, the Construction Manager shall be responsible for all errors and omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

## **§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract including the Construction Manager's responsibility to correct Work except for the Construction Manager's responsibility to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;
- .3 a final Certificate for Payment has been issued by the Architect, which the Architect may not issue until the proposed Certificate for Payment has been reviewed and approved by the Owner;
- .4 Construction Manager has provided all documents required by Section 3.5.8 of AIA Document A201-2007; and
- .5 Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after Board approval, and after satisfactory evidence has been given by the Construction Manager that all of the Construction Manager's bills have been paid and the entire Project is free from liens.

**§ 7.2.1A.1** The amount of the final payment shall be calculated as follows:

- .1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.
- .2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.
- .3 Add the Construction Manager's Fee.
- .4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.
- .5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.
- .6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.
- .7 Subtract all previous payments made by the Owner.
- .8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.
- .9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

**§ 7.2.2** The Owner's auditors or other representatives will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors or other representatives report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors or other representatives, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. Neither the Architect nor the Owner is responsible for verifying the accuracy of the Construction Manager's final accounting. The final accounting shall not preclude or in any way limit the Owner from exercising its rights of audit under other provision of this Contract.

**§ 7.2.3** If the Owner's auditors or other representatives report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to institute dispute resolution procedures pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 day the time line established in Section 15.2 of A201-2007 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to commence such dispute resolution procedures within this time period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the undisputed amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's prior written request, the Construction Manager incurs costs described in Section 6.1.1 that are not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

### § 7.3 LIQUIDATED DAMAGES

§ 7.3.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner will sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. **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 the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain.** Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

§ 7.3.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to \$ \_\_\_\_ per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ 7.3.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of \$ \_\_\_\_ per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

§ 7.3.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

### ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager shall purchase and maintain insurance as required by Article 11 of AIA Document A201-2007, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. The Construction Manager's insurance certificates are attached hereto as **Exhibit C**. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2007 Section 11.5. The bonds, which will be in the amount of the GMP, will be attached as **Exhibit A-1** to the GMP

Amendment (Construction Manager must provide the original bonds to the Owner, and a copy of the bonds will be attached to the Construction Manager's copy of the GMP Amendment).  
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

(Table deleted)

## ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, 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.)

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other: (Specify)

(Paragraphs deleted)

§ 9.4 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services reasonably and necessarily performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 10.1.4 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 10.1.5 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

*(Paragraph deleted)*

#### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price, if established, and Contract Time may be increased as provided in Section 14.3.2 of AIA Document A201–2007.

### ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2007.

#### § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Construction Manager shall not assign this Agreement without the written consent of the Owner's Board of Trustees. If Construction Manager attempts to make such an assignment without such consent, Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract. This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 11.5 Other provisions:

§ 11.5.1 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager 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 of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 11.5.2 Construction Manager shall require all construction workers, whether Construction Manager's own forces, or the forces of Construction Manager'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 have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

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

§ 11.5.4 Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow all applicable ordinances of the municipality or municipalities in which the Project is located, including the tree ordinance, if applicable. If not covered by the municipal tree ordinance, Construction Manager shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 11.5.5 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents. 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.

§ 11.5.6 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."

§ 11.5.7 Construction Manager stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under 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.

§ 11.5.8 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidation 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. Governing law and venue shall be as specified in AIA Document A201-2007 Section 13.1.

§ 11.5.9 By executing this Agreement, Construction Manager verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Construction Manager is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Construction Manager represents and warrants to the Owner that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 11.5.10 Construction Manager 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 Construction Manager has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 11.5.11 **Commitment of Current Revenues Only.** In the event that, during any term hereof, the governing body of the Owner does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then the

Owner 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 Contract. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of the Owner pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.

#### §11.5.12

- .1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Construction Manager agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the Owner or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner. If the Owner receives a written request for public information related to this Contract that is in the possession or custody of the Construction Manager and not in the possession or custody of the Owner, the Owner shall send, not later than the third business day after the date the Owner receives the written request, a written request to the Construction Manager that Construction Manager provide that information to the Owner.
- .2 The Construction Manager must:
  - .1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner for the duration of the Contract;
  - .2 Promptly, within four business days, provide to the Owner any requested contracting information that is in the custody or possession of the Construction Manager upon request of the Owner; and,
  - .3 On completion of the Contract, either:
    - .1 Provide to the Owner at no cost all contracting information related to the Contract that is in the custody or possession of the Construction Manager; or
    - .2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner.
    - .3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Construction Manager agrees that the contract can be terminated if the Construction Manager knowingly or intentionally fails to comply with the requirements of that subchapter.
    - .4 Further, under Texas Government Code Chapter 552.372(c), the Owner may not accept a bid for or awarding of a contract to an entity that the Owner has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the Owner determines and documents that the entity has taken adequate steps to ensure future compliance.
    - .5 If a Construction Manager fails to provide to the Owner the requested information, Texas Government Code Chapter 552.373 requires the Owner to notify the Construction Manager in writing of the failure and allow 10 business days to cure the violation. Owner may terminate the Contract if Construction Manager fails to remedy the failure, Owner determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

§ 11.5.13 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.

§ 11.5.14 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Construction Manager or any of its Subcontractors. As part of that responsibility, Construction Manager 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 Construction Manager's employees, subcontractors, and all other persons carrying out the Contract.

§ 11.5.15 Construction Manager 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 Construction Manager's and Construction Manager's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Construction Manager's forces or Construction Manager's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.

§ 11.5.16 The Construction Manager verifies by its signature that governmental entities are not prohibited from entering into transactions with it pursuant to Texas Government Code §2272.003.

§ 11.5.17 Construction Manager and Owner agree that this Agreement may be executed electronically, but that neither party is required to execute electronically. Upon request by the other party hereto, a party that executed this Agreement electronically will provide to the other party an original of this Agreement that is manually signed by the authorized signatory who had executed the Agreement by electronic means' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.

## ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 12.2 The following documents are included in this Contract, in addition to those listed in Section 1.1:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as revised, which is attached hereto as Exhibit B (in accordance with Section 1.1 above, all references herein to the A201-2007 shall be deemed to be references to the revised version attached as Exhibit B)
- .3 Other documents (the Exhibits to this Agreement):
  - Exhibit A Guaranteed Maximum Price Amendment
  - Exhibit A-1 Payment and Performance Bonds

*(Paragraphs deleted)*

- Exhibit B AIA Document A201–2007, General Conditions of The Contract For Construction, As Revised
- Exhibit C Construction Manager's Insurance Certificates
- Exhibit D Initial Information

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

**McALLEN INDEPENDENT SCHOOL DISTRICT  
NAME]**

**[CONSTRUCTION MANAGER'S LEGAL**

By:

OWNER (Signature)

By:

CONSTRUCTION MANAGER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain



**EXHIBIT A**

to

Agreement dated \_\_\_\_\_ between  
McAllen Independent School District and \_\_\_\_\_  
(2021-137 Veterans Memorial Stadium New Press Box)

**Form of Guaranteed Maximum Price Amendment**

[Form will be replaced with executed GMP Amendment when it is completed and executed  
by the parties]



**EXHIBIT B**

to

Agreement dated \_\_\_\_\_ between  
McAllen Independent School District and \_\_\_\_\_  
(2021-137 Veterans Memorial Stadium New Press Box)

AIA Document A201-2007 General Conditions of the Contract for Construction, as revised



**EXHIBIT C**

to

Agreement dated \_\_\_\_\_ between  
McAllen Independent School District and \_\_\_\_\_  
(2021-137 Veterans Memorial Stadium New Press Box)  
Construction Manager's Insurance Certificates



**EXHIBIT D**

to

Agreement dated \_\_\_\_\_ between  
McAllen Independent School District and \_\_\_\_\_  
(2021-137 Veterans Memorial Stadium New Press Box)

Initial Information



# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009 Exhibit A

## Guaranteed Maximum Price Amendment

for the following PROJECT:

(Name and address or location)

2021-137 Veterans Memorial Stadium New Press Box

**THE OWNER:**

(Name, legal status and address)

McALLEN INDEPENDENT SCHOOL DISTRICT  
2000 North 23<sup>rd</sup> Street  
McAllen, Texas 78501

**THE CONSTRUCTION MANAGER:**

(Name, legal status and address)

This amendment dated the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ ("GMP Amendment" or "Amendment"), is between the Owner and the Construction Manager, and amends that certain agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, between the Owner and Construction Manager with respect to the Project (the "Agreement"). Any term defined in the Agreement and used herein shall have the meaning given such term in the Agreement, unless otherwise defined herein.

### ARTICLE A.1

#### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum as that term is defined in Article 5.1 of the Agreement consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement plus the general conditions as that term is defined in Section 5.1.4 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (\$ \_\_\_\_\_), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories,

#### 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.

AIA Document A201<sup>™</sup>-2007, 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.

allowances, contingencies, alternates, the Construction Manager's Fee, general conditions and other items that comprise the Guaranteed Maximum Price.

*(Provide below or reference an attachment.)*

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:

*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price (\$0.00)
------	----------------

§ A.1.1.5 Assumptions and clarifications, if any, on which the Guaranteed Maximum Price is based:

§ A.1.1.6 The Guaranteed Maximum Price is based upon the General Conditions of the Contract, as amended, and the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:

*(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)*

Section	Title	Date	Pages
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§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:

*(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)*

Number	Title	Date
--------	-------	------

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:

*(List any other documents or information here, or refer to an exhibit attached to this Agreement.)*

§ A.1.1.10 The Guaranteed Maximum Price is based on the following unit prices, if any, set forth on **Exhibit A** attached hereto. Such prices are only applicable in the event Owner opts to increase or decrease the number of required components after acceptance of this GMP Amendment.

## ARTICLE A.2

§ A.2.1 The date of Substantial Completion established by this Amendment:

§ A.2.2 The date of Final Completion shall be 30 days after the date of Substantial Completion established by this Amendment.

§ A.2.3 It is expressly agreed that the liquidated damages provisions set forth in Section 7.3 of the Agreement are part of the consideration inducing the Owner to execute this GMP Amendment.

**ARTICLE A.3**

§ A.3.1 Unless the context otherwise requires, references to sections of the Agreement in this GMP Amendment are to the applicable section of the AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Contractor portion of the Agreement (the "A133"). This Amendment replaces the form attached as Exhibit A to the Agreement.

§ A.3.2 The original bonds required pursuant to Section 11.4 of the A201 and Article 8 of the A133 are attached to the Owner’s execution original of this GMP Amendment as Exhibit A-1 (a copy of the bonds is attached as Exhibit A-1 to Construction Manager’s execution original of this GMP Amendment). Section 11.4.1.1 of the A201 is amended by adding before the period at the end of the first sentence "or, if sooner, prior to execution of the GMP Amendment".

§ A.3.3 Updated insurance certificates required pursuant to Section 11.1.1.3 of the A201 are attached hereto as Exhibit A-2.

§ A.3.4 In the Table of Articles on page 3 of the A133, the reference to Exhibit A (including Exhibit A-1) is deleted and replaced with the following:

**EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**

- EXHIBIT A-1 PAYMENT AND PERFORMANCE BONDS**
- EXHIBIT A-2 CONSTRUCTION MANAGER’S UPDATED INSURANCE CERTIFICATES**
- EXHIBIT A-3 \_\_\_\_\_**

§ A.3.5 Except as modified herein, all terms and conditions of the Agreement, as amended by this GMP Amendment, remain in full force and effect, and Construction Manager and Owner ratify and confirm the terms and provisions of the Agreement, as amended by this GMP Amendment.

**McALLEN INDEPENDENT SCHOOL DISTRICT  
NAME]**

**[CONSTRUCTION MANAGER’S LEGAL**

By: \_\_\_\_\_  
**OWNER (Signature)**

By: \_\_\_\_\_  
**CONSTRUCTION MANAGER (Signature)**

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain

**EXHIBIT A-1**

to

GMP Amendment

to

Agreement dated \_\_\_\_\_ between  
McAllen Independent School District and \_\_\_\_\_  
(2021-137 Veterans Memorial Stadium New Press Box)

**Payment and Performance Bonds**

(Original bonds to be attached to McAllen Independent School District's Original GMP Amendment and a copy of the  
bonds to be attached to the Construction Manager's Original)



**EXHIBIT A-2**

to

GMP Amendment

to

Agreement dated \_\_\_\_\_ between  
McAllen Independent School District and \_\_\_\_\_  
(2021-137 Veterans Memorial Stadium New Press Box)

Construction Manager's Updated Insurance Certificates



# AIA<sup>®</sup> Document A201<sup>®</sup> – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

2021-137 Veterans Memorial Stadium New Press Box

### THE OWNER:

(Name, legal status and address)

McALLEN INDEPENDENT SCHOOL DISTRICT  
2000 North 23<sup>rd</sup> Street  
McAllen, Texas 78501

### THE ARCHITECT:

(Name, legal status and address)



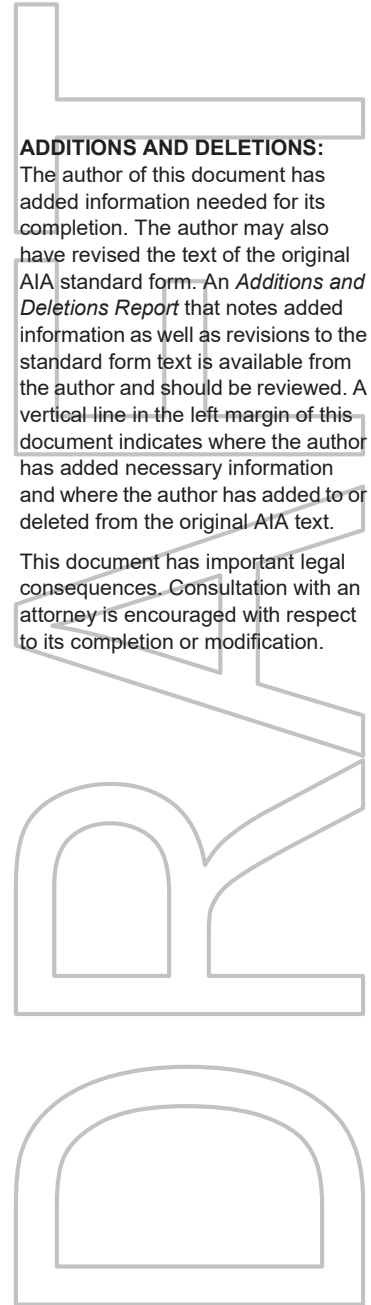
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11	INSURANCE AND BONDS
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## **Work, Definition of**

### **1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

This AIA Document A201-2007, as revised (the "A201") is attached as **Exhibit B** to AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Contractor, as revised (the "A133") for the Project. Certain defined terms are modified in the A133. Pursuant to Section 1.3 of the A133, the term "Contractor" as used in this A201 shall mean the Construction Manager.

#### § 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), all sections of the Project Manual, including Drawings, Specifications, and 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.

§ 1.1.1.2 The AIA documents used as part of the Contract have been modified by the parties so references to Contract Documents are to documents as modified or supplemented for this Project and not to the AIA standard form.

#### § 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 written Modification signed by Contractor, approved by Owner's Board of Trustees, and signed by the representative of Owner's Board of Trustees who is authorized to sign contracts. As a material consideration for the making of the Contract, modifications to the Contract shall not be construed against the maker of said modifications. 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.

§ 1.1.3.2 The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other

items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractors and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, and the State educational adequacy standards in 19 TAC Section 61.1036. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, and are free from material defects or omissions. The Construction Documents shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of construction 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 CONSTRUCTION DOCUMENTS**

Construction Documents 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. Construction Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 PROJECT MANUAL**

The Project Manual is a volume assembled for the Work which includes the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications.

#### **§ 1.1.9 PROJECT MANUAL ADDENDA**

Project Manual Addenda are written or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding or proposal documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed. The Contractor and subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

The Owner may retain Program Manager(s) to carry out some of the functions of the administration of the Owner's construction program. The Contractor, Architect, and Program Manager (when applicable) shall cooperate with each other in the performance of their respective functions. The management and reporting systems used by the Owner and/or Program Manager, including the assignment of the Program Manager, may be changed by Owner during the Project

#### **§ 1.1.10 APPROVED, APPROVED EQUAL, APPROVED EQUIVALENTS, OR EQUAL**

The terms "Approved" and "Approved Equal" relate to the substitution of materials, equipment, or procedure in writing by the Architect prior to receipt of bids

#### **§ 1.1.11 MISCELLANEOUS OTHER WORDS**

#### **§ 1.1.11.1 BUSINESS DAY**

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or other special events.

#### **§ 1.1.11.2 CALENDAR DAY**

A calendar day is a day on the Gregorian Calendar. The Contract Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

#### **§ 1.1.11.3 HOLIDAYS**

Owner-approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

#### **§ 1.1.11.4 WORK DAY**

Work days are all calendar days except Holidays.

#### **§ 1.1.11.5 ANTICIPATED WEATHER DAYS**

An allowance of regular Work Days, established as anticipated Work Days lost due to weather delays; said allowance shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather. Section 15.1.5.3 lists required Anticipated Weather Days.

#### **§ 1.1.11.6 CONTRACT SUM**

"Contract Sum" shall have the same meaning as in Section 5.1 of the A133.

### **§ 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. The Architect, in case of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents. 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.

#### § 1.2.4 MATERIALS, EQUIPMENT AND PROCESSES

Exact location and arrangement of the various pieces of equipment specified shall be determined with the approval of the Architect after equipment has been selected and/or as the Work progresses. All equipment shall, insofar as possible, be installed in such a manner as will not interfere with architectural or structural portions of the building. Should changes become necessary because of a failure of the Contractor to comply with the bidding instructions which results in equipment requiring area not shown on the Construction Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are specified, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project. When more than one material, process, or brand is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made by the Owner from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Contract Documents. The Architect shall review and respond to proposed substitutions within fifteen (15) days of receipt. Contractor shall bear all risk caused by submitting substitutions, including all costs. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements of the Contractor Documents, equally compatible with the existing installations and complementary to the architectural design for the Work. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment, but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation

and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved by the Architect and Owner, however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements.

### § 1.2.5 STANDARDS AND REQUIREMENTS

When the Contract Documents refer to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, then the current edition as of the date of execution of the Agreement by the last party to execute said Agreement shall apply. It shall be the responsibility of the Architect to address revisions or amendments to applicable codes or standards which arise after the date of execution of the Agreement and until Final Completion, pursuant to the terms of the Agreement between Owner and Architect. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

### § 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. These Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. Texas Government Code § 2269.054.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER CONSTRUCTION DOCUMENTS

§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Construction Documents, are controlled by the Agreement between the Owner and the Architect.

Construction Documents, 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. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Construction Documents. 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 Construction Documents 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 Construction Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Construction Documents 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 Construction Documents 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 independent school district identified as such in the Agreement. 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 Guaranteed Maximum Price (the "GMP"), or agree to an extension to the date of Substantial or Final Completion. The Board will act as soon as reasonably possible to avoid undue delays. 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. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 It shall be distinctly understood that by virtue of this Contract, no mechanic, contractor, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of the improvements are so erected, built, or situated, such property belonging to a political subdivision of the State of Texas. It shall be further understood that this Contract is not written for the benefit of third parties.

§ 2.1.3 The Owner shall require the Contractor and the Architect to meet periodically at mutually-agreed-upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 2.1.4 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 2.1.5 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify Contractor of same. By entering into the Contract Documents or any Agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Construction Documents.

## § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner, being a public body under the laws of the State of Texas, must have adequate funds and financing as provided by law prior to award and execution of the Contract Documents.

§ 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 If requested in writing by the Contractor prior to the start of the Work, the Owner shall furnish surveys known to the Owner describing physical characteristics and legal limitations for the site of the Project, and a legal description of the site. Other than the metes and bounds noted in the legal description of the site, the Contractor shall not 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.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness with reasonable promptness after receiving the Contractor's written request for such information or services. Absent such timely notification, any Claim based upon lack of such information or services shall be waived.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Construction 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 and other consultants' 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 Construction Manager at Risk, if applicable) or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents, and submittals approved pursuant to Section 3.12.

§ 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, activities of the Owner, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public, and quasi- public authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

## § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract and execution of the Guaranteed Maximum Price Amendment (the "GMP Amendment") 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. The Contractor represents and warrants by submission of a Proposal that Contractor has carefully examined the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports and the site of the Work, and that, from his own investigations, Contractor has satisfied itself as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of the Work. The Contractor shall not be entitled to any additional time or compensation for Contractor's failure to visit the site, or for any additional Work caused by the Contractor's fault, by improper construction, or by Contractor's failure to visit the site or to carefully study and compare the Contract Documents prior to execution of the Work.

§ 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. Contractor shall not perform any Work involving an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect

§ 3.2.3 Neither the Owner nor the Contractor is 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. Contractor shall take field measurements, verify field conditions, and shall carefully compare them to the Construction Documents. The Contractor shall 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 when the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect and Owner. Contractor shall not be entitled to additional compensation for additional Work caused by Contractor's failure to carefully study and compare the Construction Documents prior to the execution of the Work.

§ 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 Contractor's Warranty, or will result in a limitation of or interference with the Owner's intended use, Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for the position. Any necessary changes, including substitutions of materials, may only be accomplished by an appropriate Modification.

§ 3.2.9 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. (The Architect and any engineer are, by this provision, in no way relieved of their responsibilities outlined to Owner in the Contract or other contracts for identification of existing conditions.) Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and hazardous materials surveys for the particular campuses involved in the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. If applicable, Contractor shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing or painting work in schools built prior to 1978 involving lead-based paint.

§ 3.2.10 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including:

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

### § 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. 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. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying or possessing weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and employees. All areas of campus, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Contractor shall also require adequate and appropriate dress and identification of Contractor's employees, subcontractors, and all other persons carrying out the Work. 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 name in a typeface large enough to be seen from a reasonable distance. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor's and Subcontractor's direct or indirect supervision and Owner's students or employees and the general public. Failure of an individual to adhere to these standards of conduct shall result in the immediate removal of the offending employee from all construction on any of Owner's property. Repeated removal of Contractor's or Contractor's subcontractor's forces, or one serious infraction, shall constitute a substantial breach of the Agreement justifying the immediate termination by Owner pursuant to Article 14. 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. Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work. 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

**§ 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 properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and subcontractors.

**§ 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** . The Contractor shall review Subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g., a supplier), including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Paragraph are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws, including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health

Administration.

§ 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 elevations 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.

§ 3.3.12 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner; and

- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.
- .4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

**§ 3.3.13** It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

**§ 3.3.14** Pursuant to Texas Labor Code Sec. 214.008, the Contractor and any subcontractor on the Project shall properly classify, as an employee or an independent contractor, in accordance with Texas Labor Code Chapter 201, any individual the Contractor or subcontractor directly retains and compensates for services performed in connection with this Agreement. Any Contractor or subcontractor who fails to properly classify such an individual may be subject to the penalties of Texas Labor Code Sec. 214.008(c).

### **§ 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. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008.

**§ 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 prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.2.1** Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) and when, in the judgment of the Owner, in consultation with the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

**§ 3.4.2.2** The Contractor must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than fifteen (15) working days for review. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information.

**§ 3.4.2.3** Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

**§ 3.4.2.4** 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 from Contractor's failure to comply with this provision.

**§ 3.4.3.1** THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

**§ 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.

**§ 3.4.7** Including, but not limited to, the specific requirements of Section 10.1.1, Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct.

**§ 3.4.8** Pursuant to Texas Education Code Section 44.034, Contractor must give advance written notice to the Owner if the Contractor or an owner or operator of the Contractor has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Contractor failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

### **§ 3.4.9 CRIMINAL HISTORY CHECKS**

**§ 3.4.9.1** Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22

regarding its "covered employees", as defined below. If Contractor is required by Chapter 22 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then Contractor will also subscribe to that person's criminal history record information. Before beginning any Work on the Project, Contractor will provide written certification to the District that Contractor has complied with the statutory requirements as of that date. Upon request by Owner, Contractor will provide, in writing: updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history record information on the covered employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

**§ 3.4.9.2** Contractor will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

**§ 3.4.9.3** For the purposes of this Section, "covered employees" means employees, agents or subcontractors of Contractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code Section 21.060 and 19 Texas Administrative Code § 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Texas Penal Code Title 5 Offenses Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

**§ 3.4.9.4** Subcontractors or any subcontractor entity, as defined by Texas Education Code § 22.08341(a)(3), shall be required by the terms of their contract with Contractor or any other contracting entity (as defined in Texas Education Code § 22.08341(a)(1)), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certifications to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

**§ 3.4.9.5** On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

#### **§ 3.4.10 OWNER'S ADDITIONAL REQUIREMENTS RELATED TO CRIMINAL HISTORIES**

In addition, Contractor will at least annually obtain criminal history record information that relates to any employee, agent, or subcontractor of the Contractor or a Subcontractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at any location where students are likely to be present. Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present."

#### **§3.4.11 PREVAILING WAGE RATES**

**§ 3.4.11.1** Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing rate of per diem wages for work of a similar character where the Project is located, as detailed in the "Minimum Wage Schedule" provided herein. Wages listed are minimum rates only. However, no claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein. Texas Government Code Section 2258 *et seq.*; Texas Labor Code Section 62.051 *et seq.*

§ 3.4.11.2 Contractor shall forfeit, as a penalty to the Owner, \$60 for each laborer, worker or mechanic employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract Documents.

§ 3.4.11.3 Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

§ 3.4.11.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety and minimum wages.

§ 3.4.11.5 Prevailing Wage Rates: Unless a schedule is attached, the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 USC Section 276a, which can be accessed on the internet at [www.gpo.gov/davisbacon/](http://www.gpo.gov/davisbacon/), or determined by any local contractor association, whichever is less.

### § 3.5 WARRANTY

*(Paragraph deleted)*

§ 3.5.1 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. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. 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 Final 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.

**§ 3.5.11** Contractor shall certify that the Project has been constructed in general conformance with the Architect's or Engineer's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents. Contractor shall fully complete a "Certification of Project Completion" as required by 19 Texas Administrative Code Section 61.1036(c)(3)(F).

**§ 3.5.12** In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective Work or replacement of the defective items, without cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor's warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten days of Contractor's receipt of the written notice, then the Owner may take measures to correct the Work and Contractor will be obligated to reimburse Owner's costs. The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

**§ 3.5.13** When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of:

- .1 an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or
- .2 an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or
- .3 such further reasonable proof as is required by the Architect.

**§ 3.5.14** The Contractor agrees to assign to the Owner at Final Completion of the Work, such assignment to be effective no later than Final Completion, any and all manufacturers' warranties relating to materials and labor used in the Work. Contractor further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. All forms will be required to be submitted prior to Final Payment.

**§ 3.5.15** The warranties of Contractor provided herein shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

**§ 3.5.16** Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranty under section 12.2.2.1 herein on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and Architect. Prior to termination of the warranty period under Section 12.2.2.1 herein, Contractor shall accompany Owner and Architect on re-inspection of each Work in the Project and Contractor shall be responsible for correcting any warranty items which are observed or reported during the warranty period under Section 12.2.2.1 herein. Contractor shall prosecute such warranty work under Section 12.2.2.1 herein without interruption until accepted by Owner and Architect, even though such work should extend beyond the warranty period under Section 12.2.2.1 herein. If Contractor fails to provide the schedules to Owner and Architect, Contractor's warranty obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

**§ 3.5.17** Prior to receipt of Final Payment, Contractor shall:

- .1 Obtain duplicate original warranties, executed by all subcontractors, making the dates of beginning of the warranties the Date of Final Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Final Completion;
- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers;
- .5 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;
- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; and
- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing.
- .8 Deliver warranties in the form described above, to the Architect who will review same prior to submission to the Owner.

## **§ 3.6 TAXES**

Owner is an exempt entity under the tax laws of the State of Texas. Texas Tax Code § 151.309; 34 TAC § 3.322. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Texas Tax Code § 151.309, § 151.310, § 151.311 and 34 TAC § 3.291; 3.287. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner, pursuant to Texas Tax Code § 151.054(e); § 151.155; and 34 TAC § 3.287. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Texas Tax Code § 151.154, 34 TAC § 3.285. Failure of Contractor or any Sub-Contractor to obtain Certificates of Resale from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

## **§ 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. After Architect has filed the plans and specifications with the Texas Department of Licensing and Regulation, Architect shall notify Contractor that Contractor may make and submit the applications for the building permit.

**§3.7.1.1** The Contractor shall pay directly all temporary utility charges, tap charges, and water meter charges, without reimbursement from Owner. After consultation with the Owner, 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, if applicable, that require completion of documentation and/or acquisition of all permits for the Project. Also, after consultation with the Owner, the Contractor shall obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. 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.

1. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.
2. 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.
3. 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. In addition, Contractor shall authorize posting of any invoices concerning the Workers Compensation insurance carried by other parties involved in the Project, including without limitation, Architect, at the same location where Contractor posts notices regarding Workers Compensation. If applicable, the Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, traffic control, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the 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 three (3) business days after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. 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.

**§ 3.7.6** The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall inform the Architect at once when the Owner's participation is required, and the Architect shall immediately notify the Owner. Connections for temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed. If the Work is new construction, then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion.

### **§ 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, 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, or the Owner's Contingency, at Owner's discretion, 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.

**§ 3.8.4** When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the District.

### **§ 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 at all times 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. Important communications shall be similarly confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Questions about plan interpretation or directions shall be submitted to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion.

§ 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 execution of the GMP Amendment (if not included within the GMP Amendment), 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 not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval. 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 execution of the GMP Amendment (if not included within the GMP Amendment) 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.

**§ 3.10.6** The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**§ 3.11.1** 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, field test records, inspection certificates or records, manufactures' certificates, Product Data, Samples and similar required submittals. These shall be available to the Architect and the Owner at all times 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.

**§ 3.11.2** In addition to any other requirement in the Contract Documents and prior to installation, Contractor shall furnish or cause a subcontractor to furnish, for the Owner's and Architect's written approval, a physical sample of each specified item, product, fixture or device which is visible by the general public and/or attached to an architecturally-finished surface. Samples shall be suitably labeled, adequately protected and properly stored at the site. Samples which are approved and undamaged will be considered to be suitable for incorporation into the Work

**§ 3.11.3** 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 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 verified that the information contained within such submittals complies with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

§ 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, except for any such errors or omissions which are within Architect's statutory or contractual design responsibility.

§ 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. 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. Unless the Contractor is providing professional services as allowed herein, the Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

**§ 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 or, in the case of a Construction Manager at Risk, the date of the GMP Amendment.

**§ 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, one additional set for the Owner, 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 the Architect's consultants and returned to the Contractor for the Contractor's use, distribution, correction or re-submittal as required. The Architect and the Architect's 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.

**§ 3.12.13** The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

**§ 3.12.14** The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed engineer.

### **§ 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, its Subcontractors and any other 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 Owner 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 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, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Construction Documents and Contract Documents. 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.

**§ 3.14.3** No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only performed by those skilled in performing the original Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. 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. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor Subcontractors shall clean and restore such surfaces to their original condition.

**§ 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** The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint 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; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

**§ 3.15.4** After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed

interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect and their designated representatives access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

### § 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, shall waive and release claims against the Owner and Architect, and shall indemnify and hold the Owner and Architect harmless from loss on account thereof, but Contractor shall not be responsible to Architect 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 Architect and shall not be responsible to Owner if Owner requires a particular design process or product that constitutes a copyright violation. 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 Owner and Architect in writing.

### § 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, Architect, Architect's consultants, Owner's consultants and officers, 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. 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, the Architect's consultants, and agents or employees of any of them, 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 3.18 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 meets 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 such 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.

§ 3.21. ANTITRUST VIOLATION. To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 *et seq.* The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

## 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. Consent shall not be unreasonably withheld.

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

§ 4.1.4 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and the Contract Documents by the duties, responsibilities, or activities of the 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 payment is due, and, with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of 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. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

## § 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. However, Owner reserves the right to communicate directly with the Contractor and Subcontractors. 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 As further provided in the Contract Documents, 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 Construction Documents or 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 the provisions of the Contract Documents, 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 or the Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect and/or Contractor shall promptly notify, orally and in writing, the other party and Owner of any fault or defect in the Project or nonconformance with Construction Documents or the Contract Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to

notify Owner of discoveries made or actions taken by Architect. Testing or inspections required by this subparagraph shall be conducted subject to the requirements of Chapter 2269 of the Texas Government Code.

**§ 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 Construction Documents and Contract Documents and all applicable laws, statutes, codes and requirements applicable to Architect's design services. 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. If any submittal does not comply with the requirements of the Construction Documents or the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.

**§ 4.2.8** The Architect shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Construction Documents and the Contract Documents, accompanied by all supporting documentation. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or Guaranteed Maximum Price, or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Guaranteed Maximum Price, or Contract Time. A properly prepared request for a change in the Work by the Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents and do not change the Contract Sum or Guaranteed Maximum Price, or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner, or recommend to the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

**§ 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 make recommendations 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 or recommendations 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 recommendations, the Architect will endeavor to secure faithful performance by both Owner and Contractor.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect shall be final.

§ 4.2.14 The Architect will review and respond to requests for information about the Construction Documents and 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. All subcontractors shall be procured in accordance with Texas Education Code Chapter 44, Subchapter B, and Texas Government Code Chapter 2269, as applicable. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

§ 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.

§ 5.2.5 Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any

other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sums or Guaranteed Maximum Price shall be allowed for failure to so inspect or investigate.

### § 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 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. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, except as provided below." 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. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in amount commensurate with the Work to be performed by the Subcontractor.

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

§ 5.3.3 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

§ 5.3.4 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 any unperformed 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 either in accordance with Article 14 or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing;
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bonds relating to the Contract; and.
- .3 the Subcontractor provides bonds as required by law of prime contractors and by Owner.

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 Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

§ 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.

§ 5.4.4 Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance

## § 5.5 NOTICE OF SUBCONTRACTOR DEFAULT

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. The Owner reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work..

§ 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 Contractor shall cooperate with other separate contractors to ensure that the Work remains on schedule.". The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement between the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

*(Paragraph deleted)*

### § 6.2 CONTRACTOR'S RESPONSIBILITY

§ 6.2.1 It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's separate contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's separate contractors. The Contractor shall afford the Owner and separate contractors reasonable site access and opportunity for introduction and storage or staging 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. Contractor shall be responsible for coordination between Contractor's subcontractors and Owner's separate contractors. Contractor shall review Owner's contract with Owner's separate contractors and become familiar with the requirements and scope of services contained therein.

§ 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 in writing to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results, and shall promptly report in writing to the Architect and Owner if Owner's separate contractors fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. 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 and is performed in a timely manner, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.3.1 If the Architect is required to provide contingent additional services as provided in the Agreement between the Owner and the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the contingent additional services result from negligence or an omission by the Architect.

**6.2.3.2** If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.

**§ 6.2.3.3** All construction costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor.

**§ 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. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to 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. Contractor shall not make any claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Construction Documents or the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a Change in the Work. No claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price shall be valid unless so ordered or directed.

**§ 7.1.4** The total Contractor mark-up for overhead, profit or fee for work performed by the Contractor's own forces shall not exceed five percent (5%) of the cost of the Change in the Work. The total mark-up for overhead, profit or fee for supervision of work performed by subcontractors' forces shall not exceed 10% of the cost of the Change in the Work apportioned between any and all Subcontractors and Sub-subcontractors. In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed a total maximum of 15% of the total cost of the Change in the Work.

**§ 7.1.5** Allowance balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances.

§ 7.1.6 If the Contract Sum is \$1,000,000.00 or more, or if the Contract Sum is less than \$1,000,000.00, and any Change Order, Construction Change Directives, or other Changes in the Work would increase the Contract Sum to \$1,000,000.00 or more, the total of all Change Orders, Construction Change Directives, or other Changes in the Work may not increase the Contract Sum by more than 25% of the original Contract Sum. Any Change Order, Construction Change Directive, or other Change in the Work that would exceed that limit is void and of no effect. Texas Education Code §44.0411.

## § 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 or Guaranteed Maximum Price; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum or Guaranteed Maximum Price may include those listed in Section 7.3.3.

§ 7.2.3 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 or Guaranteed Maximum Price and the construction schedule. Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order

§ 7.2.4 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or the Guaranteed Maximum Price, unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.

§ 7.2.5 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 Guaranteed Maximum Price or Contract Time, or each. 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 or Guaranteed Maximum Price 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 or Guaranteed Maximum Price, 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 (additional mark-ups for overhead, profit and fees will not be allowed);
- .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, subject to the limitations of subparagraph 7.1.4; or
- .4 As provided in Section 7.3.7, subject to the limitations of subparagraph 7.1.

§ 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 may, by mutual written agreement, 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 Guaranteed Maximum Price 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 or Guaranteed Maximum Price, then the adjustment shall be determined by the Architect on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following:

- .1 Actual costs of labor, including social security and unemployment insurance, and workers' compensation insurance;
- .2 Actual costs of materials, supplies and equipment, including cost of transportation, used in performing the Change in the Work;
- .3 Actual rental costs of machinery and equipment rented from third parties, exclusive of hand tools, and
- .4 Actual costs of premiums for all bonds and insurance, and permit fees related to the Work

"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. The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

§ 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 plus the Contractor's allocated percent of profit and overhead as confirmed by the Architect.

§ 7.3.9 DELETED.

§ 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

§ 7.4.1 The Architect has authority after having obtained Owner's written 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 Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

§ 7.4.2 Allowance balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances.

### 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.

§ 8.1.2 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. The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than 30 days after the date of Substantial Completion."

§ 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 GMP Amendment 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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and Final Completion as required in the Contract Documents.

## § 8.2.4 Liquidated Damages

The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the dates required for Substantial Completion or Final Completion by the GMP Amendment.

## § 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 governmental actions, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized in writing by Owner pending mediation, or by other causes that the Architect in consultation with the Owner 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 will 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 will 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 Agreement does not permit the recovery of damages, including, without limitation, extended home office overhead expenses, general conditions or other consequential damages, by the Contractor for delay or disruption or for extensions of time due to bad weather or acts of God. Contractor agrees that the only possible compensation for any delay is an extension of time.. Accordingly, 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. In the event that the Project is a Construction Management at Risk Project, the Contract Sum shall not exceed the Guaranteed Maximum Price.

**§ 9.1.1 Commitment of Current Revenues Only.** As reflected in the Agreement, 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

**§ 9.2.1** 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, or in the case of a Guaranteed Maximum Price, within 15 days after establishing the Guaranteed Maximum Price, 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 or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Unless otherwise agreed in writing by the Owner prior to submission of the schedule of values, the schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G702Cmc and G703 shall be used unless otherwise agreed in writing by the Owner.

**§ 9.2.2** In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703, and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.
- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

### § 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. Any allowances included in the Application for Payment shall be separately itemized with supporting data attached.

§ 9.3.1.1 Contractor agrees that, for purposes of Texas Government Code Sections 2251.021 and 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Certificate for Payment shall be construed as receipt of an invoice by the Owner, for purposes of Texas Government Code Sections 2251.021 and 2251.042.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor or material supplier, Contractor has self-performed the Work.

§ 9.3.1.3 Until Final Completion of the Work, the Owner shall withhold retainage as provided in the Contract Documents, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein in Section 9.4.3 or 9.5, as amended. The retainage shall be paid with the Final Payment.

§ 9.3.2 Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those 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. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 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.

CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

**§ 9.3.4** Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

**§ 9.3.5** By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmen's liens outstanding at the date of this requisition; 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; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Texas. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Texas, including, but not limited to, Texas Penal Code Sections 32.46, 37.09, and 37.10, and may justify termination of Contractor's Contract with Owner.

## **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, return the Payment Application to the Contractor as provided in Section 9.3.4; certify, sign and 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. Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 *et seq.*

**§ 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, , the Architect has observed the progress of the Work; determined that the Work has progressed to the point indicated, in the Architect's professional opinion; determined that the quality of the Work is in accordance with the Construction Documents and Contract Documents; and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. The foregoing representations are subject to an evaluation of the Work for conformance with the Construction Documents and the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Construction Documents and the Contract Documents prior to completion and to specific qualifications expressed by the Architect in writing to the Owner. 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. Examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

**§ 9.4.3** The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

### **§ 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;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract time.

**§ 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 or Final Completion by the required date, subject to extensions of time allowed under these Conditions, Architect may withhold any further Certificate of 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 or Final Completion will be achieved. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or this Section.

### **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts 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 9.5.1.8. Owner shall not be deemed in default by reason

of withholding payment while any of such defaults remain uncured. Owner shall notify Contractor within 21 days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code Section 2251.042 *et seq.*, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or Contractor's Surety from any obligations under the Contract Documents or Construction Documents.

**§ 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. In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide copies of such Subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, then the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner. This Section is subject to the provisions of Texas Business and Commerce Code Chapter 56.

**§ 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. Action on the part of the Owner to require Contractor to pay a Subcontractor shall not impose any liability on Owner.

**§ 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** Payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor. Texas Property Code § 162.001.

**§ 9.6.8** Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor.

### **§ 9.7 FAILURE OF PAYMENT**

Pursuant to Texas Government Code Section 3251.051, 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 9.5.1.8 pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten additional days' written notice to the Owner and Architect that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents or the Construction Documents, then the Contractor shall be provided a reasonable

opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

**§ 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.

**§ 9.7.2** If the Architect does not issue a Certificate for Payment within seven days after receipt of the Contractor's Application for Payment, through no fault of the Contractor, then the Contractor shall provide written notice to the Owner, and the Owner shall have fourteen (14) business days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment, then the Contractor may, upon fourteen (14) additional business days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received.

**§ 9.7.3** If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

- .1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or
- .2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the 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 and the Construction Documents so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within 30 days. Contractor shall complete Owner's Substantial Completion Certificate.

**§ 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 and the Construction 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 Construction Documents or the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, then the Architect shall so notify the Contractor and Owner in writing, and 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, sign and issue Owner's 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. 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.

**§ 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 accepts in writing the responsibilities for, security, maintenance, heat, utilities, damage to the Work resulting from such occupancy, use or installation, and property and liability insurance. 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. 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. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

**§ 9.9.2** Immediately prior to such partial occupancy, use, or installation, 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 in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the

requirements of the Contract Documents ", nor shall it constitute evidence of Substantial Completion or Final Completion.

§ 9.9.4 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

#### § 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 prepare, sign, and issue Owner's Certificate of Final Completion and a final Certificate for Payment certifying to the Owner that, 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 the Construction Documents, and that the entire balance, including all retainages 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. "Final payment shall be made by the Owner in accordance with Owner's regular schedule for payments.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) using AIA Document G706, 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) evidence satisfactory to Owner 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) using AIA Document G707, consent of surety, if any, to final payment and (5) except for amounts currently withheld by Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A. notarized subcontractor's liens release. 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. In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- .1 Written certifications required by Section 10.5, 10.6, and 10.7;
- .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](http://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 Record drawings and "as built" drawings. At the completion of the Project, the Contractor shall submit one complete set of "as built" 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-built" 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.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment shall be paid by the Owner to the Contractor within thirty (30) days after Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

**§ 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, and it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall  
*(Paragraphs deleted)*  
not constitute a waiver of any Claims by the.

**§ 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 asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 *et seq.*, and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons and property and their requirements to maintain a work environment free of recognized hazards.

## **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.

**§ 10.1.2** Contractor's employees, agents, Sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on Owner's premises.

**§ 10.1.3** Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

**§ 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, school personnel, students, and other persons on Owner's premises and other persons who may be affected thereby, including the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;
- .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 other buildings, and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, 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. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

**§ 10.2.4** When use or storage of 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, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss 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. 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 load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

*(Paragraphs deleted)*

**§ 10.2.8** The Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason.

**§ 10.2.9** The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

**§ 10.2.10** Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

### § 10.2.11 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 to the Contract, 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. Contractor understands that, under Texas law, Owner has tort immunity.

### § 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. If Contractor encounters PCB, and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

§ 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. The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion.

§ 10.3.3 IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SUBPARAGRAPH 3.18.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site.

§ 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

*(Paragraph deleted)*

§ 10.4.1 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.

§ 10.4.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

## § 10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

§ 10.5.1 Contractor shall submit to the Architect a written certification 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. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.5.2 Final Payment shall not be made until this written certification has been received.

## § 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

## § 10.7 HAZARDOUS MATERIALS CERTIFICATION

§ 10.7 The Contractor shall provide written certification 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.

## ARTICLE 11 INSURANCE AND BONDS

§ 11.0.1 No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

§ 11.0.2 Satisfactory evidence of insurance required by this Article shall be provided to Owner prior to execution of the Contract and attached as an Exhibit. Satisfactory evidence shall include copies of all required insurance policies, declarations, and endorsements themselves. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements, as they are provided to Contractor.

§ 11.0.3 All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M.

Best's website, [www.ambest.com](http://www.ambest.com), and that permits waivers of subrogation.

§ 11.0.4 All insurance required herein shall name the Owner, its officers, employees, representatives or agents, as an additional insured, except Contractor's Worker's Compensation insurance.

§ 11.0.5 All insurance required herein shall be, by endorsement, primary and non-contributory insurance with respect to the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. 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, or 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.

§ 11.0.6 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, representatives or agents.

§ 11.0.7 All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

§ 11.0.8 Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.0.9. Any reference to the prior name of a governmental body shall be deemed to be to the current name and references to the prior name of a governmental body's form, certificate or other document shall be to the current name.

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase from and maintain such insurance as will protect them 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, including the following:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see Sections 11.1.2.1 and 11.1.5);
- .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;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18; and
- .9 Claims for damages to the Work itself, through builder's risk insurance, pursuant to Section 11.4.

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

<b>Comprehensive Automobile Liability</b>	\$1,000,000.00 Combined Single Limit per Occurrence
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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 or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, 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 or Owner 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

§12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect as incomplete, defective, or failing to conform to the requirements of the Contract Documents or Construction 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.

§ 12.2.1.2 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

### § 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 as provided in 12.2.2.1 within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it. Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

§ 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 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.

§ 12.2.6 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Construction Documents or the Contract Documents or by defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provision for this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Construction Documents or the Contract Documents, then an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

### § 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 laws of the place State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Hidalgo County.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole or in part 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 invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

### § 13.3 WRITTEN NOTICE

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; 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 sent by electronic facsimile transmission, to the last business number known to the party giving notice, with electronic confirmation of receipt; or, if sent by electronic mail, to the email address of the Owner's designated representative, with electronic confirmation of receipt. With respect to facsimiles or electronic mail 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, or Architect 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 at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities having jurisdiction. 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, which shall be included in the Cost of the Work; provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner. 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, then the Owner shall provide or contract for such additional testing, inspection or approval. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 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 undisputed 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 (31<sup>st</sup>) day after Owner receives Architect's invoice or Contractor's Certificate for Payment for the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

### § 13.7 TIME LIMITS ON LITIGATION

The Owner and Contractor shall commence all litigation, 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 EQUAL OPPORTUNITY IN EMPLOYMENT

§ 13.8.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability 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."

§13.8.2 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, age, disability, or national origin.

### § 13.9 RECORDS

§ 13.9.1 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within 10 days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

§ 13.9.2 If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.9.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

§ 13.9.4 Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.9.5 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the

Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

### § 13.10 PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION

§ 13.10.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.10.2 Neither Architect nor Contractor shall disclose any confidential information which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.

§ 13.10.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552, *et seq.*

## 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 ninety (90) 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 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in worker misconduct in violation of Article 3.3.2 or engages in conduct that would

constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies;

- .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents;
- .8 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
- .9 otherwise does not fully comply with the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, subject to any prior rights of the surety, 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. Any further payment shall be limited to amounts earned to the date of termination.

**§ 14.2.4** To the extent the costs of completing Work, including compensation for additional professional services and expenses, and other damages incurred by the Owner and not expressly waived, 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** The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate

assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Section 14.2. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

**§ 14.2.8** As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

### **§ 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, Guaranteed Maximum Price, and Contract Time may be adjusted, by mutual agreement for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. 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. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

**§ 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 for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum, or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project, to be exceeded. Such payment shall not include overhead or profit on the Work not executed.

**§ 14.4.4** Upon a determination by a court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, 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 14.4.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 CLAIMS**

#### **§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by the Contractor 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

Project or the Work. The responsibility to substantiate Claims shall rest with the Contractor. 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.

### § 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor must be initiated by written notice to the Owner and to the Architect. Claims by Contractor must be initiated within 21 calendar days after occurrence of the event giving rise to such Claim or within 21 calendar days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier. Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety-one (91) days after the occurrence of the event giving rise to such claim or within ninety-one (91) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, shall be waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

### § 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 undisputed payments for Work performed in accordance with the Contract Documents.

### § 15.1.4 CLAIMS FOR ADDITIONAL COST OR AN INCREASE IN THE CONTRACT SUM OR GUARANTEED MAXIMUM PRICE

If the Contractor wishes to make a Claim for additional cost or an increase in the Contract Sum or Guaranteed Maximum Price, written notice as provided herein shall be given to Owner and Architect. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

### § 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 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 prevented the execution of major items of work on normal working days. 'Adverse weather conditions' means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. 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, the request for extension of time shall be denied.

§ 15.1.5.3 The Contractor shall anticipate and include in the construction schedule rain days due to adverse weather conditions in accordance with the rainfall table below. A rain day is defined as a day when rainfall exceeds one-half (.5) inch during a 24-hour period. The number of rain days expected for each month is as follows:

January	8	calendar days	July	6	calendar days
February	6	calendar days	August	6	calendar days
March	5	calendar days	September	8	calendar days
April	5	calendar days	October	6	calendar days
May	5	calendar days	November	5	calendar days
June	6	calendar days	December	6	calendar days

§ 15.1.5.4 Time extensions may be granted for rain days in any month when the cumulative number of rain days during that month exceeds the number scheduled, provided that the rainfall prevented the execution of major items of work on normal working days. No day will be counted as a rain day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. The number of rain days shown in the above schedule for the first and last months of the Contract will be prorated in determining the total number of rain days expected during the period of the Contract.

§ 15.1.5.5 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors or under Contractor's control. Claims for extension of time may only be considered because of rain delays, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. Only claims for extension of time shall be considered because of hindrances or delays not the fault of either Contractor or Owner, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Board approval shall be required for any extension of time. No damages shall be paid for delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.5.6 Requests for time extension shall be submitted on a monthly basis and shall specify the time delay, the cause of the delay, and the responsible party for the delay, whether Contractor, Owner, rain day, or other. No claims for damages for delay shall be made by Contractor. Any claim not submitted under the terms of this Section shall be waived.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives all Claims against Owner for consequential damages arising out of or relating to this Contract including, but not limited to, any amount owed as compensation for the increased cost to perform the Work as a direct result of Owner- caused delays or acceleration.

This waiver by Contractor is applicable, without limitation, to all consequential damages due to termination in accordance with Article 14..

#### § 15.2 RESOLUTION OF CLAIMS AND DISPUTES

§ 15.2.1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation or litigation of any Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect 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 Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

§ 15.2.3 In evaluating Claims, the Architect 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 the Architect in making a written recommendation.

§ 15.2.4 If the Architect 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 Architect when the response or supporting data will be furnished or (3) advise the Architect that no supporting data will be furnished.

§ 15.2.5 Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum or Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

§ 15.2.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or 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 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, may, after written recommendation by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to litigation. Claims for injunctive relief shall not be subject to this Section.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be filed in writing with the other party to the Contract. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the mediation shall be conducted by the Center for Public Policy Dispute Resolution at the University of Texas School of Law.

§ 15.3.3 The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. The mediation shall be held in Hidalgo County, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Any claim not resolved in mediation shall be subject to litigation pursuant to Section 13.1

### § 15.4 NO ARBITRATION

Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, the parties expressly agree there shall be no mandatory arbitration for any dispute arising hereunder.

*(Paragraphs deleted)*

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability 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.

**OWNER:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

**CONSTRUCTION MANAGER:**

**[LEGAL NAME OF CMAR]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain

*(Paragraph deleted)*



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:**   
Arely Benavides (Dec 10, 2020 16:50 CST)

**SUPERVISOR:**   
Arely Benavides (Dec 10, 2020 16:50 CST)

**Approved for presentation to the Board of Education:**



273  
**Superintendent of Schools**

## Resolution

- A. WHEREAS, the Board of Trustees (“Board”) of the McAllen Independent School District (“MISD”) desires to sell certain acreage of real property located at 701 S. 17<sup>th</sup> Street, McAllen, Texas as more particularly described on Exhibit A attached hereto and made a part hereof (“Property”);
- B. WHEREAS, pursuant to §272.001 of the Texas Local Government Code, the Board has solicited bids for the sale of the Property, and desires to select the bid submitted by Maria Dolores Diaz; and
- C. WHEREAS, the Board desires to authorize the execution of that Real Estate Sales Contract, a copy of which is attached hereto as Exhibit B (the “Contract”) and authorize the Board President, the Superintendent or their appointed designees, to do any and all things necessary to effectuate the performance of the Real Estate Sales Contract for the sale of the Property pursuant to the terms of the Contract, and take all other action contemplated thereby.

NOW, THEREFORE, on motion duly made and seconded, it is hereby resolved that:

- 1. The Board of Trustees awards the bid for the sale of real property located at 701 S. 17<sup>th</sup> Street, McAllen, Texas to Maria Dolores Diaz; and
- 2. The Board of Trustees of the McAllen Independent School District authorizes the execution of that certain Real Estate Sales Contract by and between the Board of Trustees of the McAllen Independent School District, as Seller and Maria Dolores Diaz, as Buyer, and approves the terms and conditions the Contract, for a Sales Price of \$287,584.00 a copy of the Contract is attached hereto as Exhibit B; and
- 3. The Board of Trustees authorizes the Board President, the Superintendent or their appointed designees, to do any and all things necessary to effectuate the terms of the Contract, and take all other action contemplated thereby.

PASSED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Conrado “Ito” Alvarado, President, Board of Trustees  
of the McAllen Independent School District

Date: \_\_\_\_\_

Exhibit A to Resolution  
Property

**METES AND BOUNDS DESCRIPTION  
LOTS 1-12, BLOCK 58  
ORIGINAL TOWNSITE OF MCALLEN  
HIDALGO COUNTY, TEXAS**



Job No. 191104  
Sheet No.: 1 of 2

**Lots 1 thru 12, Block 58, ORIGINAL TOWNSITE OF MCALLEN**, Hidalgo County, Texas, map reference: Volume Q, Pages 317-318, Deed Records, Hidalgo County, Texas, and said Lots 1 thru 12, being deeded to McAllen Independent School District, recorded in Document Number 660948 Deed Records, Hidalgo County, Texas, and being more particularly described as follows;

**BEGINNING**, at an "X" mark set on the northeast corner of Lot 6, for the Northeast corner of this tract;

**THENCE** S 08° 38' 24" W, along the east line of said Lot 6, a distance of 300.00 feet, to an "X" mark set on the Southeast corner of Lot 1, for the Southeast corner hereof;

**THENCE** N 81° 21' 36" W, along the south line of said Lot 1, pass at a distance of 140.00 feet, the east line of a 20.00 foot alley pass at a distance of 160.00 feet, the west line of said alley and the southeast corner of Lot 12, continuing a total distance of 300.00 feet to the northwest corner of Lot 7, for the Northwest corner hereof;

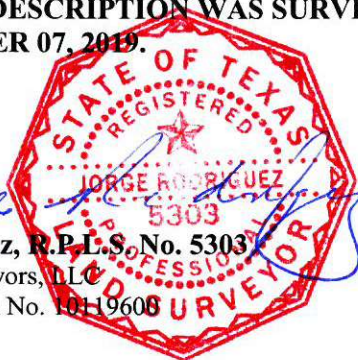
**THENCE** N 08° 38' 24" E, along the west line of said Lot 12 a distance of 300.00 feet, to the northwest corner of Lot 7, for the Northwest corner hereof;

**THENCE** S 81° 21' 36" E, along the north line of said Lot 7 at a distance of 140.00 feet pass the west line of said 20.00 foot alley pass at a distance of 160.00 feet the east line of said 20.00 foot alley and the northwest corner of said Lot 6 continuing a total distance of 300.00 feet to the **POINT OF BEGINNING**.

Bearing basis as per **TEXAS STATE PLANE COORDINATES SYSTEM NAD 1983, South Zone**.

**THE ABOVE DESCRIPTION WAS SURVEYED ON THE GROUND UNDER MY DIRECTION ON NOVEMBER 07, 2019.**

*Jorge Rodriguez*  
**Jorge Rodriguez, R.P.L.S. No. 5303**  
CVQ Land Surveyors, LLC  
T.B.P.E.L.S. Firm No. 10119608



**FLOOD DESIGNATION**  
 The flood designation for this property is "Zone C" which are "Areas of minimal flooding". As per F.E.M.A.'s Flood Insurance Rate Map Panel No. 480343 0010 C  
 Map Revised: November 2, 1982  
 Flood Zone is determined by graphic plotting only. We do not assume responsibility for exact determination.

**NOTES**  
 1. This survey was performed without the benefit of a title commitment and may be subject to easements recorded or unrecorded.  
 2. If this survey does not bear an original seal and signature, it is INVALID as per Section 663.19 of the "The Professional Land Surveying Practices Act" enacted under Article 5282c, Vernon's Texas Civil Statutes.  
 3. This certification is made to the herein named client; it is not transferable nor, certified to any owner or future owner or future lending institutions, certified to any owner or future owner or future date as noted on this plat and may not be utilized for any specific future transaction of this herein named real estate.  
 4. Easement, rules, regulations and rights in favor of Hidalgo County Water Improvement District No. 2, and all visible easements.

**LEGAL DESCRIPTION**  
 This plat is a true and correct representation of a survey made on the ground of the property located at: 701 S. 17th STREET, McAllen, Hidalgo County, Texas, described as follows: LOTS 1-12, BLOCK 58, ORIGINAL TOWNSHIP OF McALLEN, Hidalgo County, Texas, according to the map or plat thereof recorded in Volume 6, Page 317-318, Deed Records, Hidalgo County, Texas.

**REVISIONS:**  
 CHECKED BY: J.R.  
 DRAWN BY: GTG  
 JOB No.: 191104  
 SURVEYED DATE: 11/07/2019

**STATE OF TEXAS**  
 K.P.L.S. No. 5298  
 Jorge Rodriguez, Registered Professional Land Surveyor, do hereby certify the above foregoing plat to be a true and correct representation of the land as surveyed on November 7, 2019, on the ground under my direction.

**LAND SURVEYORS**  
 517 BEAUMONT AVE.  
 McALLEN, TEXAS 78201  
 Ph: (361) 818-1344  
 Fax: (361) 818-1344  
 www.cad.org  
 TRBLS FRM IN 03/2020

**JAYR HINOJOSA ENGINEERING**  
 CONSULTING ENGINEER  
 414 C. ROBERT WALKER ROAD  
 McALLEN, TEXAS 78201  
 Ph: (361) 818-1344  
 Fax: (361) 818-1344

**FOR: McALLEN INDEPENDENT SCHOOL DISTRICT**

**LAND SURVEYORS**  
 517 BEAUMONT AVE.  
 McALLEN, TEXAS 78201  
 Ph: (361) 818-1344  
 Fax: (361) 818-1344  
 www.cad.org  
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**STATE OF TEXAS**  
 K.P.L.S. No. 5298  
 Jorge Rodriguez, Registered Professional Land Surveyor, do hereby certify the above foregoing plat to be a true and correct representation of the land as surveyed on November 7, 2019, on the ground under my direction.

**LAND SURVEYORS**  
 517 BEAUMONT AVE.  
 McALLEN, TEXAS 78201  
 Ph: (361) 818-1344  
 Fax: (361) 818-1344  
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**REVISIONS:**  
 CHECKED BY: J.R.  
 DRAWN BY: GTG  
 JOB No.: 191104  
 SURVEYED DATE: 11/07/2019

**LAND SURVEYORS**  
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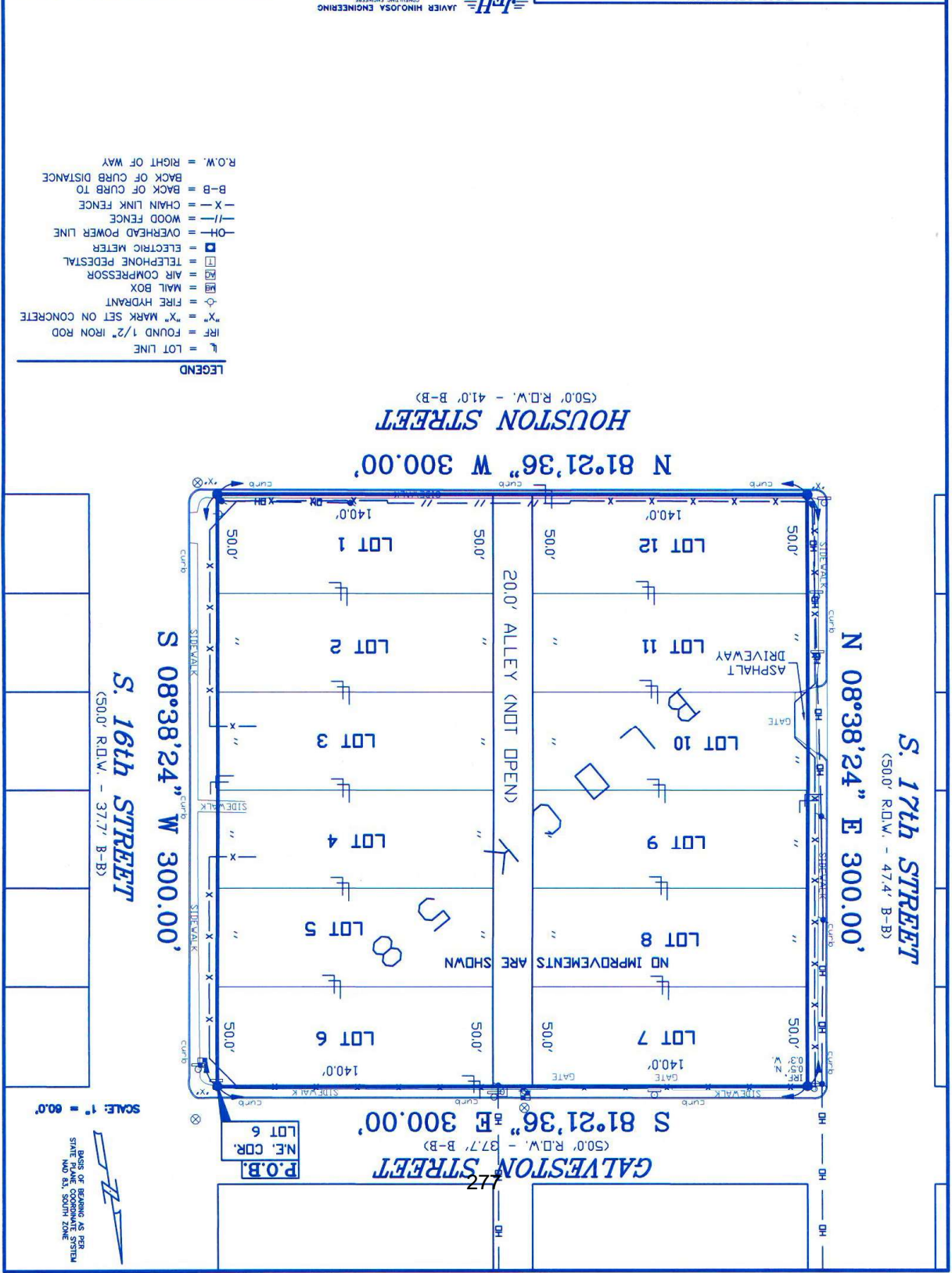


Exhibit B to Resolution  
Real Estate Sales Contract (“Contract”)

**REAL ESTATE SALES CONTRACT**

This contract to buy and sell real property is between Seller and Buyer as identified below, and is effective on the date of the last of the signatures by Seller and Buyer as parties to this contract (“Effective Date”).

**Seller:** BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT  
2000 N. 23rd St.  
McAllen, Hidalgo County, Texas 78501  
Phone: (956) 618-6000

Type of entity: Independent School District and political subdivision of the State of Texas

**Seller’s Attorney:** Stephen Crain Atlas, Hall  
& Rodriguez, LLP  
818 W. Pecan Blvd.  
McAllen, Texas 78501  
Phone: 956-682-5501  
[E-Mail: scrain@atlashall.com](mailto:scrain@atlashall.com)

**Buyer:** Maria Dolores Diaz  
Address: 400 W. Redbud Avenue  
McAllen, Texas 78504  
Phone: (956) 648-8001  
Fax: ( ) \_\_\_\_\_

**Buyer’s Attorney:** \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_

**Property:** The **surface only** of the real property described by metes and bounds in **Exhibit A**, attached hereto and incorporated herein by references, including any and all improvements located on the Property. The Property shall not include any personal property not permanently affixed to the land.

**Title Company:** TO BE DETERMINED

**Purchase Price:** \$595,000.00

**Earnest Money:** TEN THOUSAND and NO/100 DOLLARS (\$10,000.00)

**County for Performance:** This Contract shall be performed in Hidalgo County, Texas.

**A. Deadlines and Other Dates**

All deadlines in this contract expire at 10 A.M., local time where the Property is located, on the day indicated. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence for this Contract.

1. **Earnest Money Deadline:** Earnest Money must be tendered with the Buyer's Bid for the property, and must be in the amount and form set forth above and in the Bid Package. The Earnest Money deposit from the bidder approved by the Board of Trustees shall be tendered to the Title Company within two (2) business days after the Effective Date.
2. **Delivery of Title Commitment:** ten (10) days after the Effective Date.
3. **Delivery of Survey:** ten (10) days after the Effective Date.
4. **Delivery of UCC Search:** not applicable.
5. **Delivery of legible copies of instruments referenced in the Title Commitment and Survey:** twelve (12) days after the Effective Date.
6. **Delivery of Title Objections:** five (5) days after delivery of the Title Commitment, Survey, and legible copies of the instruments referenced in them.
7. **Delivery of Seller's Records specified in Paragraph G.1:** ten (10) days after the Effective Date.
8. **End of Inspection Period:** twenty-five (25) days after the Effective Date.
9. **Closing Date:** thirty (30) days after the Effective Date.
10. **Closing Time:** 10:00 a.m. unless otherwise agreed by Seller and Buyer.

**B. Closing Documents**

1. At closing, Seller will deliver the following items:
  - Fee Simple Determinable Special Warranty Deed in the form set forth in the Exhibit D attached hereto.
  - Evidence of Seller's authority to close this transaction.
  - Lien release, if any, as required by paragraph K(2)(a).
2. At closing, Buyer will deliver the following items:
  - Purchase price in cash or cash equivalent.
  - Evidence of Buyer's authority to consummate this transaction.
  - Lien release, if any, as required by paragraph K(2)(d).

The documents listed in this section B are collectively known as the Closing Documents.

**C. Exhibits**

The following exhibits are attached, and are incorporated by reference as part of this Contract:

**Exhibit A** – Legal Description of the Property

**Exhibit B** – Representations; Environmental Matters

**Exhibit C** – Buyer’s Bid

**Exhibit D** – Form of Fee Simple Determinable Special Warranty Deed

#### **D. Purchase and Sale of Property**

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract. The Form of Fee Simple Determinable Special Warranty Deed in **Exhibit D** will be used to convey the property. **Seller and Buyer agree that this Contract shall not be binding upon or enforceable against Seller until the Board of Trustees of the Seller has approved this Contract in a properly noticed open meeting of the Board of Trustees.**

#### **E. Interest on Earnest Money**

Seller may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company’s requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money.

#### **F. Title and Survey**

**1. Review of Title.** The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer’s own selection or be furnished with or obtain a policy of title insurance.

**2. Title Commitment; Title Policy.** Title Commitment means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. Title Policy means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

**3. Survey.** Survey means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

**4. Delivery of Title Commitment.** Seller must deliver the Title Commitment to Buyer by the deadline stated in section A.2. Buyer must cause the Survey to be completed by the deadline stated in section A.3. Seller must deliver legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in section A.5.

**5. Title Objections.** Buyer has until the deadline stated in section A.6. (Title Objection Deadline) to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer’s objections to any of them (Title Objections). Buyer will be deemed to

have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are Permitted Exceptions. If Buyer notifies Seller of any Title Objections, Seller has five (5) days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing (Cure Notice). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five (5) days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

#### **G. Inspection Period**

**1. Review of Seller's Records.** To the extent that Seller has possession of any *soil reports, environmental reports, engineering reports, prior surveys or site plans* of or pertaining to the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in section A.7.

**2. Entry onto the Property.** Buyer may enter onto the Property prior to closing for purposes of conducting a boundary or environmental survey, or otherwise to inspect the property, subject to the following:

**a.** Buyer must deliver evidence to Seller that Buyer has insurance for its proposed survey or inspection activities, in amounts and with coverages that are substantially the same as those maintained by Seller or in such lesser amounts or with such lesser coverages as are reasonably satisfactory to Seller;

**b.** Buyer may not unreasonably interfere with existing operations or occupants of the Property, if any;

**c.** Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;

**d.** if the Property is altered because of Buyer's inspections, Buyer must return the Property to its pre-inspection condition promptly after the alteration occurs;

**e.** Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three (3) days of their preparation or receipt by Buyer; and

**f.** Buyer must abide by any other reasonable entry rules imposed by Seller.

**3. Buyer's Right to Terminate.** Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. Unless Buyer terminates because of Seller's default, the Earnest Money shall be paid to Seller.

**4. Buyer Indemnity and Release of Seller**

**a. Indemnity.** Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, including, but not limited to, claims alleged to have arisen in whole or in part as a result of Seller's negligence.

**b. Release.** Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property, including, but not limited to, claims alleged to have arisen in whole or in part as a result of Seller's negligence.

## **H. Representations**

The parties' representations stated in **Exhibit B** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

## **I. Condition of the Property until Closing; Cooperation; No Recording of Contract**

**1. Maintenance and Operation.** Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property. Until the end of the Inspection Period, Seller will not enter into, amend, or terminate any contract that affects the Property other than in the ordinary course of operating the Property and will promptly give notice to Buyer of each new, amended, or terminated contract, including a copy of the contract, in sufficient time so that Buyer may consider the information before the end of the Inspection Period. If Seller's notice is given within three (3) days before the end of the Inspection Period, the Inspection Period will be extended for three (3) days. After the end of the Inspection Period, Buyer may terminate this contract if Seller enters into, amends, or terminates any contract that affects the Property without first obtaining Buyer's written consent.

**2. Casualty Damage.** Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen (15) days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen (15) days before closing). If Buyer does not terminate this contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) pay to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid by Seller to repair the Property.

**3. Condemnation.** Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen (15) days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen (15) days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective

interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

4. **Claims; Hearings.** Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

5. **Cooperation.** Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller, if any, and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

6. **No Recording.** Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

## **J. Termination**

1. **Disposition of Earnest Money after Termination.** Buyer and Seller agree that if this contract is terminated by either party prior to closing, Buyer shall not be entitled to the Earnest Money. Buyer hereby authorizes the Title Company to deliver the Earnest Money to Seller upon receipt by Title Company of written notice from Seller that the contract is terminated.

2. **Duties after Termination.** If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

## **K. Closing**

1. **Closing.** This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

a. **Closing Documents.** The parties will execute and deliver the Closing Documents.

b. **Payment of Consideration.** Buyer will deliver the Consideration and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be paid to Seller.

c. **Disbursement of Funds; Recording; Copies.** Title Company will be instructed to disburse funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. **Delivery of Originals.** Seller will deliver to Buyer the originals of Seller's Records.

e. **Possession.** Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.

2. **Transaction Costs**

a. **Seller's Costs.** Seller will pay the costs to prepare the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by Seller; the costs to deliver copies of the instruments described in section A.5.; and Seller's expenses and attorney's fees.

b. **Buyer Costs.** Buyer will pay the seller's costs to advertise the bid notice for the property; the basic charge for the Title Policy; the escrow fee charged by Title Company; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession; the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; the costs to obtain the Survey and certificates or reports of ad valorem taxes; the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer; the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; the costs to obtain financing of the Purchase Price, including the incremental premium costs of mortgagee's title policies and endorsements and deletions required by Buyer's lender; any cost or expenses for re-platting, platting, subdividing, zoning or meeting any requirements of a governmental authority; and Buyer's expenses and attorney's fees.

c. **Ad Valorem Taxes.** Seller represents that it is entitled to an exemption from ad valorem taxes during the time it owned the Property. If this sale or Buyer's use of the Property results in the assessment of any ad valorem taxes for the Property for the calendar year of closing, all such taxes and any associated costs will be paid by the Buyer. Buyer shall be responsible for notifying all taxing units having jurisdiction over the property of the change of ownership, and Buyer shall be responsible for any and all taxes, late fees or penalties assessed against the Property by reason of Buyer's failure to so note the change of ownership. Seller will, upon request, provide to Buyer proof of Seller's ownership of the property prior to the date of closing, and will assist Buyer in demonstrating Seller's exemption from ad valorem taxes.

d. **Brokers' Commissions.** Buyer and Seller each indemnify and agree to defend and hold the other party harmless from any loss, attorney's fees, and court and other costs arising out of a claim by any person or entity claiming by, through, or under the indemnitor for a broker's or finder's fee or commission because of this transaction or this contract, whether the claimant is disclosed to the indemnitee or not. At closing, each party will provide the other party with a release of broker's or appraiser's liens from all brokers or appraisers for which each party was responsible.

3. **Issuance of Title Policy.** Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

#### L. **Default and Remedies**

1. **Seller's Default.** If Seller fails to perform any of its obligations under this contract or if any of Seller's representations are not true and correct as of the Effective Date or on the Closing Date (Seller's Default), Buyer may as its sole and exclusive remedy terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money, less \$100.00 as independent consideration for the right granted by Seller to Buyer to terminate this contract returned to Buyer.

2. **Buyer's Default.** If Buyer fails to perform any of its obligations under this contract (Buyer's Default), Seller may elect either of the following as Seller's sole and exclusive remedy:

a. **Termination; Liquidated Damages.** Seller may terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller as liquidated damages.

b. **Specific Performance.** Seller may enforce specific performance of Buyer's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

3. **Liquidated Damages.** The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money is a reasonable forecast of just compensation to the non-defaulting party for the harm that would be caused by a default.

#### M. Miscellaneous Provisions

1. **Notices.** Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given, if the attorneys have been identified by the parties.

2. **Entire Contract.** This contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this contract.

3. **Amendment.** This contract may be amended only by an instrument in writing signed by the parties.

4. **Prohibition of Assignment.** Buyer may not assign this contract or any of Buyer's rights under it without Seller's prior written consent, and any attempted assignment is void. This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. **Survival.** The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. **Choice of Law; Venue.** This contract will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Hidalgo County, Texas.

7. **Waiver of Default.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. **No Third-Party Beneficiaries.** There are no third-party beneficiaries of this contract.

9. **Severability.** The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. **Ambiguities Not to Be Construed against Party Who Drafted Contract.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

11. **No Special Relationship.** The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. **No Boycott.** Pursuant to Texas Government Code Chapter 2270, if this contract is valued at \$100,000 or more and if Buyer has at least ten (10) full time employees, then Buyer represents and warrants to the Seller that the Buyer does not boycott Israel and will not boycott Israel during the term of this contract. This section does not apply to a sole proprietorship. On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of Chapter 2270 as it existed before the 2019 legislative amendment. In compliance with the Court's order, the Seller will not seek enforcement of the current Chapter 2270 until further order of this or higher court having jurisdiction over the issue.

13. **Counterparts.** If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.

14. **Waiver of Consumer Rights. BUYER WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41, et seq., OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER.**

**SELLER:**

BOARD OF TRUSTEES OF THE  
MCALLEN INDEPENDENT SCHOOL  
DISTRICT, a political subdivision of the  
State of Texas

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**BUYER:**

MARIA DOLORES DIAZ

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Title Company acknowledges receipt of Earnest Money in the amount of \_\_\_\_\_  
(\$ ) and a copy of this contract executed by both Buyer and Seller.

**TITLE COMPANY:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
TO REAL ESTATE SALES CONTRACT  
LEGAL DESCRIPTION OF THE PROPERTY**

**METES AND BOUNDS DESCRIPTION  
LOTS 1-12, BLOCK 58  
ORIGINAL TOWNSITE OF MCALLEN  
HIDALGO COUNTY, TEXAS**



Job No. 191104  
Sheet No.: 1 of 2

**Lots 1 thru 12, Block 58, ORIGINAL TOWNSITE OF MCALLEN**, Hidalgo County, Texas, map reference: Volume Q, Pages 317-318, Deed Records, Hidalgo County, Texas, and said Lots 1 thru 12, being deeded to McAllen Independent School District, recorded in Document Number 660948 Deed Records, Hidalgo County, Texas, and being more particularly described as follows;

**BEGINNING**, at an "X" mark set on the northeast corner of Lot 6, for the Northeast corner of this tract;

**THENCE** S 08° 38' 24" W, along the east line of said Lot 6, a distance of 300.00 feet, to an "X" mark set on the Southeast corner of Lot 1, for the Southeast corner hereof;

**THENCE** N 81° 21' 36" W, along the south line of said Lot 1, pass at a distance of 140.00 feet, the east line of a 20.00 foot alley pass at a distance of 160.00 feet, the west line of said alley and the southeast corner of Lot 12, continuing a total distance of 300.00 feet to the northwest corner of Lot 7, for the Northwest corner hereof;

**THENCE** N 08° 38' 24" E, along the west line of said Lot 12 a distance of 300.00 feet, to the northwest corner of Lot 7, for the Northwest corner hereof;

**THENCE** S 81° 21' 36" E, along the north line of said Lot 7 at a distance of 140.00 feet pass the west line of said 20.00 foot alley pass at a distance of 160.00 feet the east line of said 20.00 foot alley and the northwest corner of said Lot 6 continuing a total distance of 300.00 feet to the **POINT OF BEGINNING**.

Bearing basis as per **TEXAS STATE PLANE COORDINATES SYSTEM NAD 1983, South Zone**.

**THE ABOVE DESCRIPTION WAS SURVEYED ON THE GROUND UNDER MY DIRECTION ON NOVEMBER 07, 2019.**

*Jorge Rodriguez*  
**Jorge Rodriguez, R.P.L.S. No. 5303**  
CVQ Land Surveyors, LLC  
T.B.P.E.L.S. Firm No. 10119608



**FLOOD DESIGNATION**  
 The flood designation for this property is "Zone C" which are "Areas of minimal flooding". As per F.E.M.A's Flood Insurance Rate Map Panel No. 480343 0010 C  
 Map Revised: November 2, 1982  
 Flood Zone is determined by graphic plotting only. We do not assume responsibility for exact determination.

**NOTES**  
 1. This survey was performed without the benefit of a title commitment and may be subject to easements recorded or unrecorded.  
 2. If this survey does not bear an original seal and signature, it is INVALID as per Section 663.19 of the "The Professional Land Surveying Practices Act" enacted under Article 5282c, Vernon's Texas Civil Statutes.  
 3. This certification is made to the herein named client; it is not transferable nor, certified to any owner or future owner or future lending institutions, certified to any owner or future owner or future date as noted on this plat and may not be utilized for any specific future transaction of this herein named real estate.  
 4. Easement, rules, regulations and rights in favor of Hidalgo County Water Improvement District No. 2, and all visible easements.

**LEGAL DESCRIPTION**  
 This plat is a true and correct representation of a survey made on the ground of the property located at: 701 S. 17th STREET, McAllen, Hidalgo County, Texas, recorded in Volume 6, Page 317-318, Deed Records, Hidalgo County, Texas.  
 TOWNSHIP OF McALLEN, Hidalgo County, Texas, according to the map or plat thereof recorded in Volume 6, Page 317-318, Deed Records, Hidalgo County, Texas.  
 1-12, BLOCK 58, ORIGINAL LOT 1-12, BLOCK 58, ORIGINAL McALLEN, TEXAS 78501  
 517 BEAUMONT AVE. McALLEN, TEXAS 78501  
 (956) 818-1344  
 WWW.CADSWORKS.COM  
 CADSWORKS, LLC

**REVISIONS:**  
 CHECKED BY: J.R.  
 DRAWN BY: GTG  
 JOB No.: 191104  
 SURVEYED DATE: 11/07/2019

**JAVIER HINOJOSA ENGINEERING**  
 CONSULTING ENGINEER  
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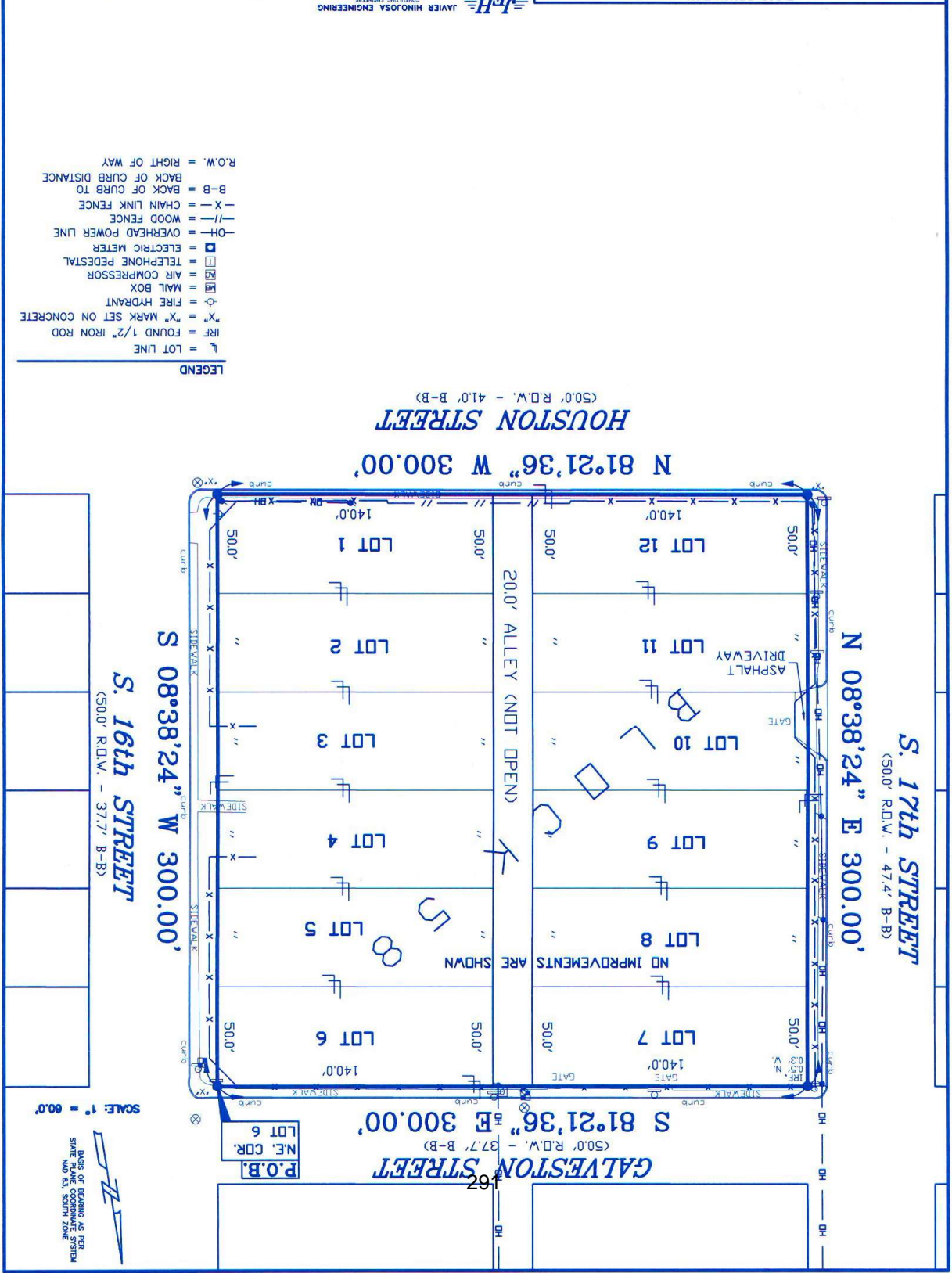
**STATE OF TEXAS**  
 K.P.L.S. No. 5298  
 Jorge Rodriguez, Registered Professional Land Surveyor, do hereby certify the date foregoing plat to be a true and correct representation of the land as surveyed on November 7, 2019, on the ground under my direction.

**Jorge Rodriguez**  
 Registered Professional Land Surveyor  
 K.P.L.S. No. 5298  
 STATE OF TEXAS

**LAND SURVEYORS**  
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 (956) 818-1344  
 WWW.CADSWORKS.COM  
 CADSWORKS, LLC

**LAND SURVEYORS CERTIFICATION**

SHEET: 2 OF 2



**EXHIBIT B  
TO REAL ESTATE SALES CONTRACT**

**EXHIBIT B**

**REAL ESTATE SALES CONTRACT**

**Representations; As Is, Where Is; Environmental Matters**

**A. Seller's Representations to Buyer**

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. **Authority.** Seller is an independent school district duly organized, validly existing, and in good standing under the laws of the State of Texas.
2. **Litigation.** There is no litigation pending or, to the best of Seller's knowledge, threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.
3. **Violation of Laws.** Seller has not received written notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.
4. **Licenses, Permits, and Approvals.** Seller has not received written notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal. Provided, however, that Seller's governmental exemption for *ad valorem* taxes is not transferable to Buyer, and Buyer will be responsible for all taxes and related charges arising from its purchase of the Property.
5. **Condemnation; Zoning; Land Use.** Seller has not received written notice of any condemnation, zoning, or land-use proceedings affecting the property.
6. **No Liens.** On the Closing Date, the Property will be free and clear of any valid mechanic's and material man's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, material man's, or other lien against the Property other than work or materials to which Buyer has given its consent.
7. **No Other Representation.** Except as stated above, Seller makes no representation with respect to the Property.
8. **No Warranty.** Seller has made no warranty in connection with this contract.

**B. Buyer's Representations to Seller**

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. **Receipt of Bid Package.** Buyer represents to Seller that Buyer has received and reviewed the Bid Package for the property, consisting of the following items:
  - a. Notice of Sale of Real Property
  - b. Instructions to Bidders
  - c. Bid Form
  - d. This Contract
  - e. Special Warranty Deed

## **2. Consultation with Attorney.**

Buyer represents to Seller that Buyer is aware that this contract has important legal consequences, and that Buyer is entitled to consult an attorney of its choosing prior to executing this contract. Buyer further represents that to the extent it has elected not to consult an attorney; Buyer has done so of its own free will and act.

### **C. PROPERTY SOLD "AS IS, WHERE IS;" NO WARRANTIES**

**NOTICE: THE PROPERTY WILL BE CONVEYED TO BUYER IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS. ALL WARRANTIES, EXCEPT THE LIMITED WARRANTY OF TITLE IN THE CLOSING DOCUMENTS, ARE EXPRESSLY DISCLAIMED.**

**SELLER NOTIFIES BUYER OF PRESENCE OF ASBESTOS CONTAINING MATERIAL LOCATED IN THE MASTIC IN THE FLOOR TILE, AIR CONDITIONING JACKETED LINES, GLAZING PANELS, INSULATION OF WATER LINES AND PLASTER. SELLER WILL PROVIDE BUYER WITH ALL AVAILABLE RECORDS AND REPORTS PERTAINING TO ASBESTOS - CONTAINING MATERIALS IN THE PROPERTY IN THE POSSESSION OF THE SELLER. BUYER IS AWARE OF BUYERS RESPONSIBILITY TO ENSURE COMPLIANCE WITH 15 U.S.C. SECTIONS 2641 THROUGH 2656 AND 29 C.F.R. SECTIONS 1910.1001 ET. SEQ. AND 1926.1101 ET. SEQ.**

BUYER REPRESENTS AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESSED OR IMPLIED, OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITAT ON, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE COMPLIANCE WITH ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE SOIL CONDITIONS, WATER, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (E) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (F) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (G) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (H) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (I) IN ADDITION TO THIS ASBESTOS DISCLOSURE OF SELLER TO BUYER CONTAINED IN THIS SECTION C; ANY OTHER ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR

HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (J) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER.

Buyer further represents and agrees that, having been given the opportunity to inspect the property, Buyer is relying solely on its own investigation of the property and not on any information provided by Seller. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Seller will not be liable or bound in any manner by any verbal or written statements, representations or information pertaining to the property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Buyer further represents and agrees that to the maximum extent permitted by law, the sale of the property as provided for herein is made on an "as is" condition and basis with all faults. It is understood and agreed that the purchase price has been adjusted by prior negotiation to reflect that all of the property is sold by Seller and purchased by Buyer subject to the foregoing.

The provisions of this Section C regarding the Property will be included in the Deed with appropriate modification of terms as the context requires.

#### **D. ENVIRONMENTAL MATTERS**

**ASBESTOS AND/OR ASBESTOS-CONTAINING MATERIALS AND OTHER HAZARDOUS MATERIALS MAY BE PRESENT ON THE PROPERTY, AND BUYER ACKNOWLEDGES THAT IT MAY PERFORM AN ENVIRONMENTAL SURVEY OF THE PROPERTY PRIOR TO BIDDING.**

**AFTER CLOSING, AS BETWEEN BUYER AND SELLER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS OCCURRING BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVES. BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD**

**OTHERWISE IMPOSE ON SELLERS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING BUT NOT LIMITED TO CLAIMS ALLEGED TO HAVE ARISEN AS A RESULT OF SELLER'S OWN NEGLIGENCE. BUYER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF SELLER AND IN THE NAME OF SELLER, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.**

The provisions of this Exhibit B regarding the Property will be included in the Deed with appropriate modification of terms as the context requires.

**EXHIBIT C  
TO REAL ESTATE SALES CONTRACT  
BUYER'S BID**

### III. BID FORM

**IMPORTANT: A bid, to be valid, must be manually signed in ink by an authorized person in the space provided. By such signature, bidder agrees to strictly abide by the terms and conditions contained in this Bid Package and exhibits thereto.**

Entity, Company or Firm Name: ENCORE FINE PROPERTIES

Contact Person: MARTIE MARTINEZ

Address: 2505 BUDDY OWENS BLVD., MCALLEN, TX 78504

Telephone #: (956) 393-7365

Fax#: \_\_\_\_\_

Date: DECEMBER 2, 2020

Signature:  dotloop verified  
12/02/20 12:08 PM CST  
HTXV-MLVM-TDTF-MLIH


Printed Name: MARTIE MARTINEZ

Title: REALTOR

**MINIMUM BID AMOUNT IS \$590,000**

BID AMOUNT: \$ TWO HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED EIGHTY-FOUR &00/100. (\$287,584.00)

- If determined to be highest bidder, wire transfer instructions will be sent. Wire transfer Money Deposit in the amount of Ten Thousand Dollars (\$10,000.00) made payable to the MCALLEN INDEPENDENT SCHOOL DISTRICT shall be made as per District instructions.
- Bidder's Completed Form 1295, which has been electronically filed with the Texas Ethics Commission is attached to this Bid and bears Filing Certification No. 2020-694657 in the "Office Use Only" box.
- Conflict of Interest Questionnaire

 dotloop verified  
12/02/20 12:56 PM CST  
9WBG-53HR-GBIO-1V1V

Signature of Bidder or Bidder's Authorized Representative

MARIA DOLORES DIAZ

Printed Name (and Title, if any)

Date: DECEMBER 2, 2020

**EXHIBIT D  
TO REAL ESTATE SALES CONTRACT  
FORM OF SPECIAL WARRANTY DEED**

**EXHIBIT D TO REAL ESTATE SALES CONTRACT**  
**Special Warranty Deed**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

Date: \_\_\_\_\_

Grantor: BOARD OF TRUSTEES OF THE MCALLEN  
INDEPENDENT SCHOOL DISTRICT

Grantor's Mailing Address: 2000 N. 23rd, St.  
McAllen, Hidalgo County, Texas 78501

Grantee: \_\_\_\_\_

Grantee's Mailing Address \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ County, Texas \_\_\_\_\_

Consideration: TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration. Property  
(including improvements):

Reservations from Conveyance:

For Grantor and Grantor's successors and assigns forever, a reservation of all oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

Fee Simple Determinable Condition:

Grantee is purchasing the Property with the full knowledge that part of the consideration for this conveyance of the Property to Grantor, is Grantee's agreement that the Property shall never be used as an open-enrollment charter school as provided and/or described by Subchapter D, Title 2, Texas Education Code as may from time to time be amended.

Exceptions to Conveyance and Warranty: [*Permitted*

*Exceptions*]

Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters arising from

and existing by reason of any water or utility district; and taxes for 2020, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

THE PROPERTY IS SOLD AND CONVEYED TO AND ACCEPTED BY GRANTEE IN ITS PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OTHER THAN THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT THE SALES PRICE REFLECTS SUCH CONDITION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN AND THE LIMITED WARRANTIES AND REPRESENTATIONS CONTAINED IN THE REAL ESTATE SALES CONTRACT BY AND BETWEEN GRANTOR AND GRANTEE, THE SALE OF THE PROPERTY IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION (OR LACK THEREOF) OF OR WITH RESPECT TO: (I) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE;

(II) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (III) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (IV) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY INCLUDING BUT NOT LIMITED TO THE DISCLOSURES IN THE REAL ESTATE SALES CONTRACT; (V) ANY ASBESTOS AND ALSO ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (IV) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER. GRANTEE HAS MADE ITS OWN PHYSICAL INSPECTION OF THE PROPERTY AND HAS SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE. GRANTOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE NATURE OR QUANTITY OF THE INTERESTS THEY OWN IN ANY OIL, GAS AND OTHER MINERALS. AFTER CLOSING, AS BETWEEN GRANTEE AND GRANTOR, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S REPRESENTATIVES.** GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR

ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON GRANTORS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY. GRANTEE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF GRANTOR AND IN THE NAME OF GRANTOR, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

Grantor, for the consideration and subject to the reservations from conveyance and exceptions to conveyance and warranty, grants, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, their heirs, beneficiaries, successors and assigns for so long as the Fee Simple Determinable Condition is met and if the Fee Simple Determinable Condition is violated, the Property will automatically revert to and be owned by Grantor without the necessity of any further act on the part of Grantor, it being Grantor's intent to convey a fee simple determinable estate to Grantee; and Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, their heirs, beneficiaries, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through or under Grantor but not otherwise.

When the context requires, singular nouns and pronouns include the plural.

BOARD OF TRUSTEES OF THE MCALLEN  
INDEPENDENT SCHOOL

By: EXHIBIT ONLY - NOT FOR SIGNATURE, President

THE STATE OF TEXAS           §  
  §       ACKNOWLEDGMENT  
COUNTY OF HIDALGO       §

BEFORE ME, a Notary Public, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon her oath stated that he/she is the President of the Board of Trustees of the McAllen Independent School District; that he/she was authorized to execute such instrument pursuant to resolution of the Board of Trustees adopted on \_\_\_\_\_; and that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_ day of \_\_\_\_\_, 20 .

EXHIBIT ONLY - NOT FOR SIGNATURE  
Notary Public, State of Texas

Return to Grantee's  
Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** 

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



303  
**Superintendent of Schools**

Office of Tax Assessor-Collector

# COUNTY of HIDALGO

Pablo "Paul" Villarreal, Jr. PCC.



October 29, 2020

P.O. Box 178  
Edinburg, Texas 78540-0178  
Ph. (956) 318-2157  
Fax (956) 318-2733  
[www.hidalgocountytax.org](http://www.hidalgocountytax.org)

Cynthia Medrano-Richards RTSBA, CPA  
Chief Financial Officer, McAllen ISD  
2000 North 23<sup>rd</sup> St.  
McAllen, TX. 78501

Ms. Richards,

Enclosed please find the 2020 Tax Roll Totals for your district.

Be advised these totals do not include totals for accounts currently under protest. Those totals will be added once the protests are resolved.

Please place this item on the agenda of your next meeting for approval by your governing body, as per Section 26.09(e), of the Texas Property Tax Code.

Should you have any questions in regards, do contact our office.

Sincerely,

Pablo (Paul) Villarreal Jr., PCC  
Hidalgo County Tax Assessor-Collector

Xc: Hon. Maria Arcilia Duran, CPA  
Hidalgo County Auditor



MCALLEN ISD

ENTITY

The Following information is furnished as requested.

NOTE: IT IS IMPORTANT YOU COMPLETE EACH SECTION SEPARATELY.

Itemized 2020 Tax Rate (per \$100 valuation):

(A) Maintenance and Operation (M and O) \$ 1.0450

(B) Debt Service (I and S) \$ 0.0936

Total TAX RATE (A + B) FOR 2020 \$ 1.1386

Total TAX LEVY FOR 2020 \$ 88,388,374.05

No-New-Revenue Rate 2020 \$ 1.0756

Voter-Approval Rate 2020 \$ 1.1454

Average Residential Value 2020 \$ 119,547

11/05/2020

DATE

*Pablo (Paul) Villaverde Jr.*

SIGNATURE



HIDALGO COUNTY TAX ASSESSOR-COLLECTOR

TITLE

PLEASE RETURN AS SOON AS POSSIBLE TO:

HIDALGO COUNTY APPRAISAL DISTRICT  
Attn: Lydia Elizondo, Finance/Personnel Director  
PO BOX 208  
EDINBURG, TX 78540-0208  
FAX: (956) 289-2120

## CERTIFIED TAX ROLL AS OF OCTOBER 1, 2020

TAX ASSESSMENT ROLLS OF MCALLEN ISD FOR THE YEAR 2020 SHOW THE FOLLOWING SUMMARIES:

ROLL	NUMBER ACCTS	MARKET VALUE	TAXABLE VALUE	FREEZE LOSS	TOTAL LEVY
REAL PROPERTY	39,923	8,878,028,273	7,021,884,570	2,447,519.49	77,503,658.37
PERSONAL PROPERTY	6,157	1,063,445,951	942,274,394	.00	10,884,715.68
MOBILE HOME PROPERTY	0	0	0	.00	.00
MINERAL PROPERTY	0	0	0	.00	.00
OTHER PROPERTY	0	0	0	.00	.00
<b>TOTAL</b>	<b>46,080</b>	<b>9,941,474,224</b>	<b>7,964,158,964</b>	<b>2,447,519.49</b>	<b>88,388,374.05</b>

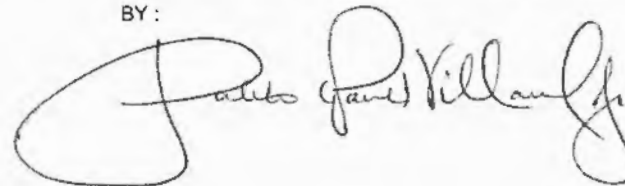
RATE OF TAXATION ASSESSMENT RATIO 100%

TOTAL TAX RATE 01.138600

PABLO (PAUL) VILLARREAL JR., PCC

TAX ASSESSOR - COLLECTOR HIDALGO COUNTY

BY :




Tax Collection System - HIDALGO COUNTY  
 Certified Roll Jurisdiction Summary  
 Processing For Tax Year: 2020 County Code: 108 Tax Unit: ALL

Jurisdiction: 47 MCALLEN ISD					
<b>Total Parcels:</b>	46,080	<b>Tax Rate:</b>	1.1386000		
<b>Market Value:</b>	9,941,474,224	<b>State Hom:</b>	25,000	<b>Opt Hom:</b>	0.0000000
		<b>State O65:</b>	10,000	<b>Opt O65:</b>	0
		<b>Disabled:</b>	10,000	<b>Opt Disabled:</b>	0
<b>AG Exclusion Count:</b>	270	<b>AG Exclusion Amt:</b>	183,282,520		
<b>Timber Exclusion Count:</b>	0	<b>Timber Exclusion Amt:</b>	0		
<b>HS Capped Count:</b>	6,813	<b>HS Capped Amt:</b>	56,734,367		
<b>Assessed Value:</b>	9,701,457,337				
<b>Exempt Count/Amt:</b>	28	8,803,418	<b>Pro Misc Exempts Count/Amt:</b>	5	2,586,163
<b>Prorated-Exxv Count/Amt:</b>	895	1,006,367,535	<b>Chdo Count/Amt:</b>	5	398,448
<b>Hb366 Count/Amt:</b>	207	29,021	<b>Pro Schools Count/Amt:</b>	4	1,834,410
<b>100% Exempt Vet Count/Amt:</b>	375	41,086,829	<b>Pro Charitable Functions Count/Amt:</b>	3	710,136
<b>Freeport Count/Amt:</b>	52	102,709,394	<b>Pollution Control Count/Amt:</b>	4	1,825,387
<b>Surviving Spouse First Responder Count/Amt:</b>	4	405,408	<b>Charitable Org Count/Amt:</b>	1	299,275
<b>Solar Exemption Count/Amt:</b>	3	105,513			
<b>State Homestead Count:</b>	19,334	<b>State Homestead Amt:</b>	480,681,151		
<b>Local Homestead Count:</b>	0	<b>Local Homestead Amt:</b>	0		
<b>State Over 65 Count:</b>	7,587	<b>State Over 65 Amt:</b>	73,554,914		
<b>Local Over 65 Count:</b>	0	<b>Local Over 65 Amt:</b>	0		
<b>Surviving Spouse Count:</b>	423	<b>Surviving Spouse Amt:</b>	4,160,084		
<b>State Disabled Count:</b>	523	<b>State Disabled Amt:</b>	4,894,704		
<b>Local Disabled Count:</b>	0	<b>Local Disabled Amt:</b>	0		
<b>Total VET Count:</b>	639	<b>Total VET Amt:</b>	6,846,583		
<b>*VET Surviving Spouse Count:</b>	39	<b>*VET Surviving Spouse Amt:</b>	371,500		
*included in the Total VET Count/Amt					
<b>Partial Exempt Values:</b>	570,137,436				
<b>Taxable Value:</b>	7,964,158,964				
<b>Total Levy Amt:</b>	88,388,374.05				
<b>Late Rendition Penalty Count:</b>	3,105	<b>Late Rendition Penalty Amt:</b>	155,979.37		
<b>BPP Interstate Alloc. Penalty Count:</b>	1	<b>BPP Interstate Alloc. Penalty Amt:</b>	0.01		
<b>Frozen Account Count:</b>	8,228				
<b>Frozen Homesite Value:</b>	1,027,003,423				
<b>Frozen Taxable Value:</b>	712,667,849				
<b>Unfrozen Levy Amt:</b>	8,114,436.34				
<b>Frozen Levy Amt:</b>	5,666,916.85				
<b>Frozen Levy Loss Amt:</b>	2,447,519.49				
<b>Total Non-Exempt Parcel Count:</b>	46,052				

ENTITY	MCALLEN ISD (SML)		2020
JURISDICTION	47		
EXEMPT VALUE (EXXV)		TOTAL PARCELS	46,080
AG EXCLUSION	183,282,520	TOTAL MARKET VALUE	9,941,474,224
HS CAPPED AMOUNT	56,734,367	TOTAL EXEMPT PROPERTY	- 1,977,315,260
ABATED AMOUNT		TAXABLE VALUE	= 7,964,158,964
FREEPORT VALUE	102,709,394	TAX RATE PER \$100	- 1.1386
HB366 VALUE	29,021	LEVY (Before Frozen Levy Loss)	= 90,679,913.96
POLLUTION VALUE	1,825,387	LEVY LOSS DUE TO FREEZE	* 2,447,519.49
HISTORICAL VALUE		BPP INTERSTATE ALLOC	= 0.01
CHDO EXEMPTION	398,448	LATE RENDITION	+ 155,979.37
PRO SCHOOLS	1,834,410	LEVY	+ 88,388,373.85
VETERAN FULL EXEMP	41,086,829	TOTAL LEVY (From TC502)	+ 88,388,374.05
HOMESTEAD	480,681,151	VARIANCE	= -0.20
OVER 65 HOMESTEAD			
EXEMPTION	73,554,914		
OVER 65 HOMESTEAD			
SURVIVING SPOUSE	4,160,084		
DISABLED	4,894,704		
VETERAN EXEMPTIONS	6,846,583		
PRO CHARITABLE FUNCT	710,136		
SURVIVING SPOUSE 1ST			
RESPONDER	405,408		
PRO MISC EXEMPTS	2,586,163		
EXEMPT	8,803,418		
PRORATED EXXV	1,006,367,535		
SOLAR EXEMPTION	105,513		
CHARITABLE	299,275		
TOTAL EXEMPT PROPERTY	<b>1,977,315,260</b>		

**BOARD AGENDA REPORT  
McALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**BOARD AGENDA REPORT  
McALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** *Adelfino*

**SUPERVISOR:** *Cynthia Medrano-Richards*

**Approved for presentation to the Board of Education:**

*J. Adansky*

310 Superintendent of Schools

Description	A	B	C		D	E
	Original Budget	Revised Budget 10/31/2020	Budget Amendments Under Consideration		Revised Budget 11/20/2020	
			Programmatic or Policy Changes		Reclassifications	
<b>Unaudited Fund Balance</b>	<b>98,446,473</b>	<b>98,446,473</b>				<b>98,446,473</b>
Revenues:						
Local:						
Property Taxes	79,823,682	79,823,682				79,823,682
Interest Income	1,559,000	1,559,000				1,559,000
Other Local Income	2,827,299	2,877,589	1,500			2,879,089
State:	137,774,797	137,774,797				137,774,797
Federal:	21,131,995	21,266,401				21,266,401
Other Sources:	0	4,296,271				4,296,271
<b>Total Revenues</b>	<b>243,116,773</b>	<b>247,597,740</b>	<b>1,500</b>	<b>0</b>	<b>0</b>	<b>247,599,240</b>
Expenditures:						
11 Instruction	125,902,178	130,752,455			(91,963)	130,660,492
12 Inst. Res. & Media Services	3,591,042	3,610,620			1,158	3,611,778
13 Curriculum Dev. & Inst. Staff Dev.	4,566,016	4,994,649			61,686	5,056,335
21 Inst. Leadership	3,424,579	3,308,772	39,330		(3,132)	3,344,970
23 School Leadership	13,398,767	13,814,545			(14,866)	13,799,679
31 Guid., Counseling & Eval. Ser.	10,033,333	9,971,044	1,500		(1,136)	9,971,408
32 Social Work Services	1,864,993	1,943,243				1,943,243
33 Health Services	3,031,453	3,110,971			3,077	3,114,048
34 Student (Pupil) Trans.	4,007,329	4,819,124			(5,000)	4,814,124
35 Food Services	17,566,135	19,276,464				19,276,464
36 Curricular/Extracurricular Act.	9,996,499	9,992,384			(20,906)	9,971,478
41 General Administration	7,895,268	8,690,663				8,690,663
51 Plant Maint. & Operations	19,817,409	22,064,716	500,000		(105,103)	22,459,613
52 Security and Monitoring Serv.	4,387,069	4,985,937			100,310	5,086,247
53 Data Processing Services	4,703,026	6,536,003			75,875	6,611,878
61 Community Services	35,975	42,286				42,286
71 Debt Service	7,073,589	7,078,589				7,078,589
81 Fac. Acquisition & Const.	5,000	796,574	141,444			938,018
95 Pmt. to Juv. Justice Alt. Ed. Prg.	40,000	40,000				40,000
99 Other Intergovernmental Charges	891,975	891,975				891,975
Other Uses	85,330	2,285,330				2,285,330
<b>Total Expenditures</b>	<b>242,316,965</b>	<b>259,006,344</b>	<b>682,274</b>	<b>0</b>	<b>0</b>	<b>259,688,618</b>
<b>Preliminary Ending Fund Balance</b>	<b>99,246,281</b>	<b>87,037,869</b>	<b>1</b>	<b>(680,774)</b>	<b>0</b>	<b>86,357,095</b>

GENERAL FUND  
Programmatic or Policy Changes

**REVENUES:**

<u>Local</u>	<b>Other Local Income</b> - Rebate from College Board for Fund 199 General Fund	<u>\$ 1,500</u>	1,500
		Grand Total	<u><u>\$ 1,500</u></u>

**EXPENDITURES:**

Function 21	- Transfer from Fund Balance for Fund 162 Career Technical Education for Virtual Classroom Connectivity for Students with Chromebooks	<u>\$ 39,330</u>	39,330
Function 31	- Increase to Supplies for Fund 199 General Fund from College Board Rebate	<u>\$ 1,500</u>	1,500
Function 51	- Transfer from Assigned Fund Balance for Fund 199 General Fund - COVID Contingency	<u>\$ 500,000</u>	500,000
Function 81	- Transfer from Fund Balance for Fund 162 Career Technical Education for Agricultural Animal Pens for AG Farm	<u>\$ 141,444</u>	141,444
		Grand Total	<u><u>\$ 682,274</u></u>

Description	A	B	C		D	E
	Original Budget	Revised Budget 07/31/2020	Budget Amendments Under Consideration		Revised Budget 11/20/2020	
			Programmatic or Policy Changes	Reclassifications		
<b>Unaudited Fund Balance</b>	<b>2,046,426</b>	<b>2,046,426</b>				<b>2,046,426</b>
Revenues:						
Local						
Property Taxes	6,683,727	6,683,727				6,683,727
Interest Income	20,400	20,400				20,400
Other Local Income	44,000	44,000				44,000
State	164,373	164,373				164,373
Federal						
Other Sources			46,207,905			46,207,905
<b>Total Revenues</b>	<b>6,912,500</b>	<b>6,912,500</b>	<b>46,207,905</b>	<b>0</b>		<b>53,120,405</b>
Expenditures:						
71 Debt Service	6,912,500	6,912,500	455,546			7,368,046
Other Uses			45,750,007			45,750,007
<b>Total Expenditures</b>	<b>6,912,500</b>	<b>6,912,500</b>	<b>46,205,553</b>	<b>0</b>		<b>53,118,053</b>
<b>Preliminary Ending Fund Balance</b>	<b>2,046,426</b>	<b>2,046,426</b>	<b>2,352</b>	<b>0</b>		<b>2,048,778</b>

**DEBT SERVICE**  
**Programmatic or Policy Changes**

**REVENUES:**

**Other Sources**

	- Increase to Issuance of Bonds for Refunding Bonds 2020A for Fund 599 Debt Service	\$ 9,691,521	
	- Increase to Issuance of Bonds for Refunding Bonds 2020B for Fund 599 Debt Service	<u>36,516,384</u>	
			46,207,905
	Grand Total	<u>\$ 46,207,905</u>	

**EXPENDITURES:**

	- Increase to Other Debt Service Fees for Refunding Bonds 2020A for Fund 599 Debt Service	\$ 133,304	
	- Increase to Other Debt Service Fees for Refunding Bonds 2020B for Fund 599 Debt Service	<u>322,242</u>	
			455,546
Other Uses	- Increase to Non-Operating Expenses for Refunding Bonds 2020A For Fund 599 Debt Service	\$ 9,557,121	
	- Increase to Non-Operating Expenses for Refunding Bonds 2020B For Fund 599 Debt Service	<u>36,192,886</u>	
			45,750,007
	Grand Total	<u>\$ 46,205,553</u>	

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** December 14, 2020

**SUBMITTED BY:** *Natalia Goza*  
Natalia Goza (Dec 8, 2020 16:07 CST)

**SUPERVISOR:** \_\_\_\_\_

**Approved for presentation to the Board of Education:**



315 \_\_\_\_\_  
**Superintendent of Schools** Dec 8, 2020