



## 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, May 9, 2022, beginning at 5:00 PM Texas Our Texas room/Staff Development Building, Achieve Early College High School, 1601 North 27th Street, McAllen, TX 78501.

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

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. **INVOCATION**
3. **PLEDGE OF ALLEGIANCE**
4. **PUBLIC COMMENT(S)**
5. **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 2022-2023
  - B) Human Resources Employee Resignation(s) for School Year 2021-2022

- C) Superintendent’s Recommendation Concerning the Renewal of 2021-2022 Employee Contracts of Teachers and Other Professional Personnel for the 2022-2023 School Year - Policy DC (LEGAL)
- D) Pending and/or Potential Litigation
  - 1. TEA Mediation Resolution - TEA Docket No. 080-SE-1121
- E) Possible Real Estate Acquisition
- 6. **RECONVENE IN OPEN SESSION**
- 7. **ACTION ON ITEM(S) IN CLOSED SESSION**
  - A) Approval of Human Resources Recommendation(s) for School Year 2022-2023 7  
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources  
  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
  - B) Human Resources Employee Resignation(s) for School Year 2021-2022 8  
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources  
  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
  - C) Approval of Superintendent’s Recommendation Concerning the Renewal of 2021-2022 Employee Contracts of Teachers and Other Professional Personnel for the 2022-2023 School Year - Policy DC (LEGAL) 9  
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources  
  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
  - D) Pending and/or Potential Litigation
    - 1. TEA Mediation Resolution - TEA Docket No. 080-SE-1121
  - E) Possible Real Estate Acquisition
- 8. **SUPERINTENDENT'S REPORT(S) - Teacher of the Year Luncheon**  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- 9. **RECOGNITION(S)**
  - A) Recognition of National Association of Music Merchants Foundation's Naming McAllen ISD one of the "Best Communities for Music Education" for 2022 10  
 Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services  
  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
  - B) Recognition of District Teacher of the Year 11  
 Item Submitted: Jacob Berry, Director Community Information  
  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- 10. **PROCLAMATION(S)**
  - A) Approval of Proclamation Regarding National School Nurse Day (May 11, 2022) 12

Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

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

- B) Approval of Proclamation Regarding Teacher Appreciation week (May 2 - 6, 2022) 14

Item Submitted: Jacob Berry, Director Community Information

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

11. **DONATION(S)**

12. **BOARD MEMBER(S), BOARD COMMITTEE(S) AND DISTRICT REPORT(S)**

A) Board Committee Reports

1. Instructional Services Briefing - Chair - Tony Forina
2. Human Resources Briefing - Chair - Marco Suarez
3. District Operations Briefing - Chair - Daniel Vela
4. Business Operations Briefing - Chair - Debbie Crane Aliseda
5. Board Officers Briefing - Sam Saldivar, Jr.

B) District Reports

1. Report Regarding Intention to Apply for Federal Grants 16  
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

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

2. Report Regarding Intent to Apply for Environmental Protection Agency's Clean School Bus Rebate Program 17  
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

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

3. Report Regarding the Delinquent Tax Collections for the Period of January 1, 2022 to March 31, 2022 24  
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

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

13. **CONSENT AGENDA ITEMS**

- A) Approval of Interlocal Agreement No. 2023-003 Special Education Medicaid Reimbursement Filing 30  
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

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

- B) Approval of Instructional Material Allotment (“IMA”) and Texas Essential Knowledge and Skills (“TEKS”) Certification Form 50  
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

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

C)	Approval of 2022-2023 Staff Development Waiver Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations <b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	92
D)	Approval of Competitive Sealed Proposal No. 2022-1046 James "Nikki" Rowe High School Heating, Ventilation, and Air Conditioning ("HVAC") Improvements Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations <b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	94
E)	Approval of Contract No. 2022-189 Hellas Construction, Inc. through RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations <b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	163
F)	Approval of Contract No. 2022-190 American Fence through RFP 2022-1024 Fencing Materials and Services Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations <b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	196
14.	<b>INSTRUCTIONAL SERVICES, INSTRUCTIONAL LEADERSHIP, HUMAN RESOURCES, DISTRICT OPERATIONS, BUSINESS OPERATIONS, AND BOARD OF TRUSTEES ITEMS</b>	
A)	<b>Instructional Services Item(s)</b> (Dr. Rosalba De Hoyos) <b>Instructional Leadership Item(s)</b> (Bridgette Vieh)	
B)	<b>Human Resources Item(s)</b> (Todd Miller)	
1.	Approval of the Job Description for Director of UTRGV McAllen ISD-Collegiate Academy Item Submitted: Todd Miller, Assistant Superintendent Human Resources <b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	231
2.	Approval of the Job Description for Literacy Coach (Writing 3-8) Item Submitted: Todd Miller, Assistant Superintendent Human Resources <b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	235
3.	Approval of the Job Description for Instructional Coach - Reading Interventionist (K-5) Item Submitted: Todd Miller, Assistant Superintendent Human Resources <b>Presenter:</b> Dr. J. A. Gonzalez, Superintendent	236
C)	<b>District Operations Item(s)</b> (Adel Felix)	
D)	<b>Business Operations Item(s)</b> (Cynthia Medrano Richards)	

1. Approval of Setting Public Meeting Date for Budget and Vote on Proposed Tax Rate 237  
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
  2. Approval of the McAllen Independent School District April Budget Amendment for Fiscal Year Beginning July 1, 2021 and Ending June 30, 2022 238  
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 244  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
    - a) Regular Board Meeting - April 25, 2022
    - b) Special Board Meeting - May 2, 2022 245
  2. Approval of Travel for Board of Trustees 247
- 15. SCHEDULE OF FUTURE MEETINGS**
- A) Special Board Meeting - May 16, 2022 5:30 P.M. - Auditorium at McAllen High School
  - B) Special Board Meeting- May 18, 2022 - 5:00 p.m. - Dr. Ricardo Chapa Board room at Administration Building
  - C) Board Workshop - May 18, 2022 - 5:10 p.m. - Dr. Ricardo Chapa Board room at Administration Building
  - D) Regular Board Meeting - May 23, 2022 5:00 P.M. - Texas Our Texas room/Staff Development Building at Achieve Early College High School
  - E) Board Workshop- May 24, 2022 - 5:30 p.m. - Dr. Ricardo Chapa Board room at Administration Building
  - F) Special Board Meeting- May 25, 2022 - 5:30 p.m. - Dr. Ricardo Chapa Board room at Administration Building
- 16. CLOSED SESSION: The Board of Trustees may reconvene in Closed Session for further discussion regarding the agenda item(s) listed.**
- 17. OPEN SESSION: The Board of Trustees may reconvene into Open Session for discussion regarding the agenda item(s) listed.**
- 18. ADJOURNMENT**

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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 May 6, 2022 at 3:00 P.M.*

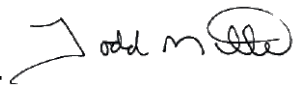
*Natalia Goza*

*on behalf of the Board of Trustees*

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

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

**SUPERVISOR:** 

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

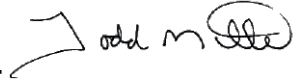


7 \_\_\_\_\_  
**Superintendent of Schools** May 2, 2022

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

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

**SUPERVISOR:** 

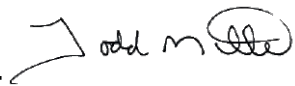
**Approved for presentation to the Board of Education:**



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

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



9 \_\_\_\_\_  
**Superintendent of Schools** Apr 29, 2022

**BOARD RECOGNITION FORM  
McALLEN INDEPENDENT SCHOOL DISTRICT**

**Meeting Date (Recommended):** May 9, 2022

**Title of Recognition:**

**Photographer Requested:** Yes

**AV needs:**

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



**Superintendent** May 4, 2022

**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):** May 9, 2022

**Title of Recognition:** Recognition of District Teachers of the Year

Person(s) Being Recognized (include names & description i.e student at X High School):  
Recognition of 2022 McAllen ISD District Teachers of the Year.

Reason for Recognition: These two Campus of the Year teachers have been named District Teachers of the Year. They are selected to represent the District in Regional Teacher of the Year competition.

Please note any items that will be presented: None

**Photographer Requested:** Yes

**AV needs:** None

Name of Presenter: Jacob Berry  
Phone: (956)618-6023  
EMail: Jaco.Berry@mcallenisd.net

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



**Superintendent**

May 2, 2022

**PROCEDURE FOR BOARD RECOGNITION**

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

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

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** *Elizabeth Gutierrez*  
[Elizabeth Gutierrez \(May 2, 2022 11:13 CDT\)](#)

**SUPERVISOR:** *Adelfino*

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

*J. X. O'Sullivan*

12 \_\_\_\_\_  
**Superintendent of Schools**



# Proclamation



*State of Texas  
County of Hidalgo  
McAllen Independent School District*

*Whereas*, students are the future and, by investing in them today, we are ensuring our world for tomorrow; and

*Whereas*, all students have a right to have their physical and mental health needs safely met while in the school setting; and

*Whereas*, students today face more complex and life-threatening health problems requiring care in school; and

*Whereas*, the COVID-19 pandemic has emphasized the essential role school nurses play in student health and academic success; and

*Whereas*, school nurses have served a critical role in improving public health and in ensuring student's academic success for more than 100 years; and

*Now Therefore*, I, Sam Saldivar, Jr., President, Board of Trustees of the McAllen Independent School District do hereby proclaim the day of May 11, 2022, be observed as

## *“School Nurses Day”*

The National Association of School Nurses celebrates and acknowledges the accomplishments of school nurses everywhere and their efforts of meeting the needs of today's students by improving the delivery of health care in our schools and offers gratitude for the nation's school nurses, who contribute to our local communities by helping students stay healthy, in school, and ready to learn, and keeping parents and guardians at work, not just on this National School Nurse Day, but at every opportunity throughout the year.

*IN WITNESS WHERE OF*, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 9th day of May 2022.

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


*Attest:*

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Debbie Crane Aliseda, Secretary, Board of Trustees  
McAllen Independent School District

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 2, 2022

**SUBMITTED BY:**  Jacob Berry (May 2, 2022 18:10 CDT)

**SUPERVISOR:** 

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



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**Superintendent of Schools**      **May 2, 2022**



# *Proclamation*

*State of Texas*  
*County of Hidalgo*  
*McAllen Independent School District*

*Whereas*, a strong, effective system of free public education for all children and youth is essential to our democratic system of government; and

*Whereas*, much of this progress can be attributed to the qualified and dedicated teachers entrusted with the educational development of our children; and

*Whereas*, the District is keenly aware of the importance of teachers in children's reaching their full potential; and

*Now Therefore*, I, Tony Forina, Vice-President, Board of Trustees of the McAllen Independent School District do hereby proclaim the week of May 2-6, 2022 as

## *“National Teacher Appreciation Week”*

I call upon all residents to support our teachers, demonstrate appreciation, and offer to them partnerships that will reinforce their work for the children of our community.

*IN WITNESS WHEREOF*, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 9<sup>th</sup> day of May, 2022.

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Tony Forina, Vice-President, Board of Trustees  
McAllen Independent School District

*Attest:*

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Debbie Crane Aliseda, Secretary, Board of Trustees  
McAllen Independent School District

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBJECT:** Report Regarding Intention to Apply for Federal Grants

**REFERENCE:** Goal 1: Students Achievement/Student Focus; Strategy: Engaging Learning Environment

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

Yearly districts are to submit grant applications for the following programs:

- Title I, Part A-Improving Basic Programs
- Title II, Part A-Supporting Effective Instruction
- Title IV, Part A, Subpart 1
- Title I, Part C - Migrant
- Perkins V: Strengthening CTE For 21st Century
- IDEA - Part B Formula
- IDEA - Part B Preschool
- IDEA - Part B Discretionary (Deaf) 315
- IDEA - C ECI - 340

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

**LEGAL REVIEW:** N/A

**BUDGETARY CONSIDERATIONS:** N/A

**RECOMMENDED BOARD ACTION:**

This item is for information purposes only.

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

For further information contact:  
Name: Dr. Rosalba De Hoyos  
Office: 956-618-6048  
eMail: [rosalba.dehoyos@mcallsisd.net](mailto:rosalba.dehoyos@mcallsisd.net)

*Rosalba De Hoyos*

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

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

*J. Alexander*

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** *Laura Williams*  
Laura Williams (May 4, 2022 15:56 CDT)

**SUPERVISOR:** *Adelino*

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

*J. Alexander*

**17** \_\_\_\_\_  
**Superintendent of Schools**

# Bipartisan Infrastructure Law Clean School Bus Program

Initial Implementation Report to Congress



**Report Regarding Intent to Apply for  
EPA's Clean School Bus Rebate Program**

**Board Meeting  
May 9, 2022**

# Highlights of the Bipartisan Infrastructure Law Clean School Bus Program - EPA's Clean School Bus Rebates:

## Key Dates:

- Grant Period Fiscal Year 2022 - 2026
- CSB Rebates open May 2022-August 2022
- EPA reviews applications September 2022
- EPA notification of selection status October 2022
- Registered for the Clean School Bus Listserv
- Lottery for selection of award

## Clean School Bus Program Funding:

\$2.5B is dedicated for zero-emission school buses

\$2.5B is dedicated for clean and zero-emission school buses

## Purpose:

On November 15, 2021, President Biden signed into law the Bipartisan Infrastructure Law. Under Title XI: Clean School Buses and Ferries this law provides \$5 billion over the next five years (FY22-26) to transform the nation's fleet of school buses. The new replacements will produce either zero or low tailpipe emissions and result in cleaner air on the bus, bus loading areas, and in our community.

Infrastructure funding – charging infrastructure unit

# Prioritization Criteria:

- High-need school districts and low-income areas
  - Small Area Income and Poverty Estimates (SAIPE) for 2020 having 20% or more students living in poverty
- Rural school districts
- Tribal school districts
- Lowest overall cost of bus replacements
- Local conditions, including length of bus routes and weather conditions

# School Bus Replacement Guidelines

- Eligible buses for replacement must be 2010 or older diesel-powered school buses
- If a fleet does not have eligible 2010 or older diesel school buses and is requesting zero-emission school bus replacements:
  - Scrap 2010 or older non-diesel internal combustion engine buses
  - Scrap, sell, or donate 2011 or newer internal combustion engine buses
- Have a gross vehicle weight rating of 10,001 lbs. or more
- Be operational at the time of application
- Be owned by the fleet receiving the replacement bus
- Provided bus service to McAllen ISD for at least 3 days/week on average during the 2021/2022 school year at the time of applying
- Be operated as part of the school fleet for which the award was made for not less than five years

Thank you.

Report Regarding Intent to Apply for Environmental Protection Agency's Clean School Bus Rebate Program



Grant Name	Bipartisan Infrastructure Law Clean School Bus Program - EPA's Clean School Bus Rebate
Term of Grant	2022-2026
Grant Amount	TBA
Grant Manager	Laura Williams
Purpose and Use of Funds	Help fund 100% of the cost of the replacement buses and charging or fueling infrastructure.

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

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



**24** \_\_\_\_\_  
**Superintendent of Schools**

**McALLEN  
INDEPENDENT SCHOOL DISTRICT**

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**DELINQUENT TAX COLLECTION REPORT  
MAY 09, 2022**



LAW OFFICES  
OF  
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP  
ATTORNEYS AT LAW  
1512 S. Lone Star Way  
EDINBURG, TEXAS 78539

Telephone: (956) 383-4500  
Facsimile: (956) 383-7820

May 09, 2022

Mr. Sam Saldivar Jr., President  
Mr. Tony Forina, Vice-President  
Ms. Debbie Crane Aliseda, Secretary  
Mr. Conrado Alvarado, Trustee  
Mrs. Sofia M. Pena, Trustee  
Mr. Marco Suarez, Trustee  
Mr. Daniel D. Vela, Trustee  
Dr. José A. Gonzalez Ed. D, Superintendent  
McAllen Independent School District  
2000 North 23rd Street  
McAllen, Texas 78501

RE: Delinquent Tax Collection for January 1, 2022 through March 31, 2022

Dear Dr. Gonzalez and Board of Trustees:

The Linebarger Goggan Blair & Sampson, LLP Report highlights our delinquent ad valorem tax collection program on behalf of McAllen Independent School District. Our collection results, as noted herein, indicate our efforts continue to be successful for the McAllen Independent School District.

Please know that we truly appreciate the opportunity to represent McAllen Independent School District on all delinquent ad valorem tax matters. As always, we will continue to provide McAllen Independent School District with quality representation, consistent results, and an ample experienced staff of attorneys, legal assistants and a certified tax assessor collector dedicated to servicing your account. We are available to address any questions you may have or to discuss any concerns that interest you at your convenience.

Sincerely,



Kelly R. Salazar

26 Capital Partner

Our delinquent tax collection program for McAllen Independent School District continues to emphasize two basic premises: to work with individual taxpayers to collect taxes owed to McAllen Independent School District and to only use the tool of litigation as a final option. We listen and continually adapt to your changing needs to ensure that we are providing the best possible service and deliver customized collection programs that yield the best possible results. The following information is an overview of our collections efforts during this reporting period.

## MAILINGS

Our extensive mailing program is designed to advise people who have not paid their delinquent taxes to McAllen Independent School District. During the course of the fiscal year, we send delinquent notices, with varying degrees of intensity to every delinquent taxpayer. The intensity of the notice varies on factors such as: time of year, type of property and the particular needs of the jurisdiction.

4 Demand Mailing – 2,017 Statements Mailed

## CONTACTS

Our comprehensive collection services provide a wide scope of exceptional assistance to McAllen Independent School District and its taxpayers. Equipped with multi-skilled representatives, we create and manage flexible payment plans for taxpayers experiencing any financial hardship.

958  
Phone Calls

387  
Payoff Request

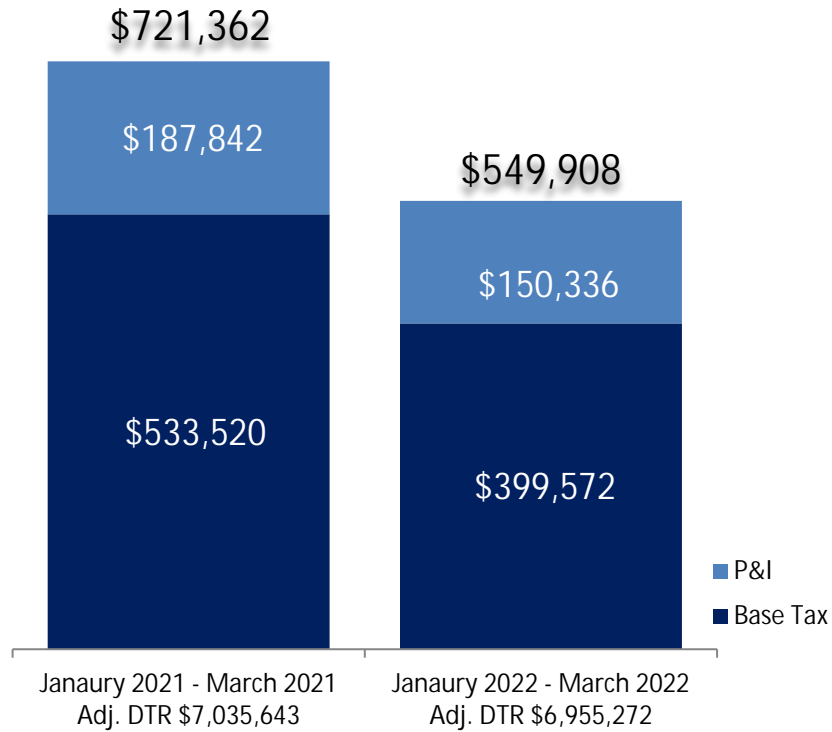
26  
Payment Agreements

## LITIGATION

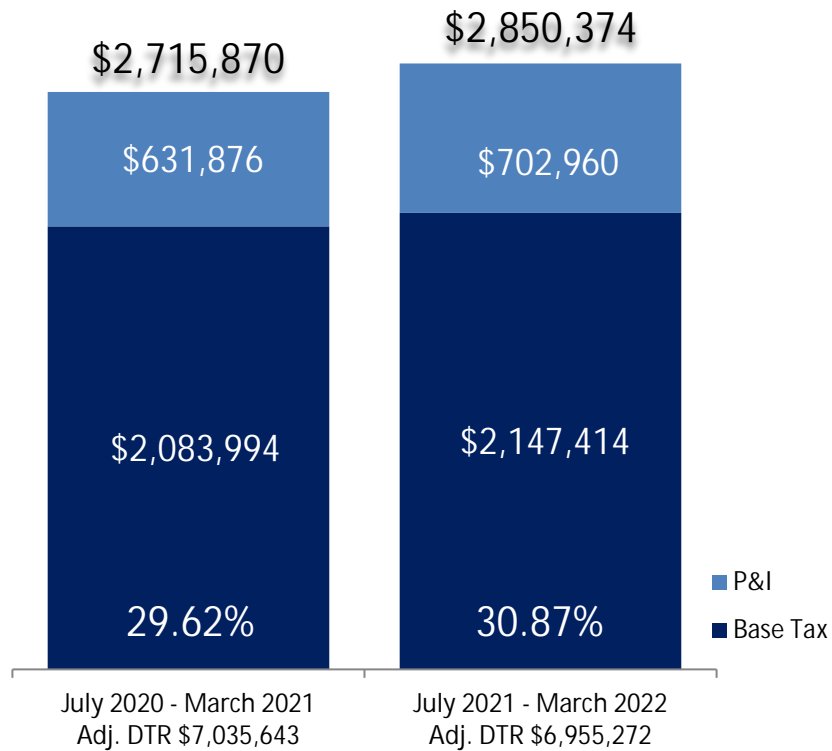
Filing a lawsuit to collect delinquent taxes is used as a final resort; after diligent efforts to contact and work with taxpayers are fully exhausted. Once the decision to file suit has been made, a complete property title search is conducted, the taxable property is further identified and all interested parties, including all lien holders, are identified and served with notice of the lawsuit.

Litigation Activity	Cases	Base, Penalty and Interest
• Filed Lawsuits	53	\$126,868
• Lawsuits Disposed	35	\$297,832
• Judgments Taken	11	\$30,752
• Tax Warrants	2	\$4,126
• Pending Litigation as of Apr. 22	387	\$1,920,406

3<sup>rd</sup> Quarter Collection Comparison



Delinquent Collections to Date Comparison



## FUTURE OVERVIEW

### Review of Pending Judgments and the Filing of Additional Lawsuits

During the next quarter we will continue to work pending lawsuits for full payment or payment agreements. We will also continue researching the delinquent tax roll for possible new lawsuits; both real and personal property accounts.

### Continued Monitoring of Bankruptcy Accounts

As a continuation of our standard operating practice, we will actively monitor and verify accounts in bankruptcy for the payment of taxes, penalties, and interest owed to the School District.

### Mailing Program

Our mailing program will continue as scheduled on behalf of the School District for the upcoming quarter.

### Scheduling of Property Sales

As properties are taken to judgment, they will be reviewed and checked for payment. Those judgments with no taxpayer response will be further reviewed and scheduled for possible tax sale.

Execution of the work plan established for the McAllen Independent School District will include the constant monitoring of collection figures in order to adjust resources and enforce the collection of delinquent taxes. Our collection efforts will also include prosecuting pending suits to conclusion, mailing monthly letters, and filing new suits in order to maximize the collection of taxes. We will continue to work closely with you and your administrative staff to provide assistance and advice on all property tax matters, including changes in the law brought about by amendments to the Texas Property Tax Code.

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** *Maribelle Elizondo*  
Maribelle Elizondo (May 5, 2022 17:57 CDT)

**SUPERVISOR:** *Rosalba De Hoyos*

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

*J. Adansby*

30 \_\_\_\_\_  
**Superintendent of Schools**

**INTERLOCAL AGREEMENT  
BETWEEN  
HOUSTON INDEPENDENT SCHOOL DISTRICT  
AND  
MCALLEN INDEPENDENT SCHOOL DISTRICT  
RE.  
SCHOOL HEALTH AND RELATED SERVICES (SHARS) PROGRAM**

- I. **GENERAL:** An Interlocal Agreement (Agreement) is one of the six procurement methods allowed under Section 44.031, of the Texas Education Code. This Agreement is entered into by and between Houston Independent School District hereafter referred to as "HISD" and MCALLEN INDEPENDENT SCHOOL DISTRICT hereafter referred to as "MISD" or "Client District" as the contracting parties, pursuant to Chapter 791, Texas Government Code, as amended. In consideration of the provisions, covenants and mutual responsibilities herein expressed, the parties hereto enter into this Agreement as follows:
- II. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for all purposes incident to this Agreement shall lie in Harris County, Texas.
- III. **PURPOSE:** The purpose of this Agreement is for the HISD to manage and provide Medicaid Billing and Claiming Services for the MISD's School Health and Related Services (SHARS) Program. These services to be offered by HISD to MISD, and the duties and responsibilities of MISD, are described in "**EXHIBIT A: ROLES AND RESPONSIBILITIES**" section of this Agreement. The services of HISD are defined and limited to the claiming for Medicaid reimbursement of the SHARS program activities and associated costs.
- IV. **TERM AND TERMINATION:** This Agreement shall commence on 05/27/2022 and shall remain in effect until 05/26/2023 and this Agreement will be automatically renewed annually for three (3) consecutive years after the completion of the above term, except with 60 days advance written notice of termination by either party in accordance with this Agreement.

Either party may terminate this Agreement at any time without cause upon sixty (60) days advanced written notice to the other party. In the event of termination by either party, each party will cooperate with the other party to facilitate the turnover of materials and records as needed to assure continued support or on-going operations. Any rights each party has to receive revenues from Medicaid reimbursements shall survive termination of this Agreement to the extent that such revenues were completely earned for SHARS claims billed and/or for consulting services provided prior to the effective date of the termination of the Agreement.

- V. **DATA AND PROPRIETARY RIGHTS:** HISD retains for itself sole ownership of all proprietary rights in and to all designs, engineering details and other data pertaining to any discoveries, inventions, patent rights, software, improvements and all related materials originated and/or developed by HISD personnel. HISD will own all proprietary rights to all SHARS program billing records, documents, and proprietary or confidential information and/or trade secrets developed, created and/or originated by HISD prior to the commencement of this Agreement, or by HISD and MISD during the continuation of this Agreement. Upon termination of this Agreement according to provisions in Section IV above, the MISD shall make available to the HISD and turn over at HISD's request, all SHARS program billing records, documents, and proprietary information received from the HISD.

Interlocal Agreement Between Houston ISD and MCALLEN INDEPENDENT SCHOOL DISTRICT re.  
SHARS Program

- VI. **RECORDS, DOCUMENTS, AND CONFIDENTIALITY:** The MISD acknowledges and agrees not to disclose to any nonparty to this Agreement, other than as required to implement the terms of this Agreement, any SHARS records, documents, proprietary information, reports, operating information, financial data, or other business information, relating to the other parties without written permission from an HISD official, except as otherwise provided by the Texas Public Information Act or other applicable law.
- VII. **CONFIDENTIAL AND PROPRIETARY INFORMATION:** The parties may provide technical information and expertise to each other that is either: (1) marked as being confidential or, (2) if delivered in oral form, is summarized in writing within 10 working days and identified as being confidential ("Confidential Information"). The receiving party shall for a period of five (5) years from the date of disclosure (i) hold the disclosing party's Confidential Information in strict confidence, and (ii), except as previously authorized in writing by the disclosing party, not publish or disclose the disclosing party's Confidential Information to anyone other than the receiving party's employees on a need-to-know basis, and (iii) use the disclosing party's Confidential Information solely for performance of this Agreement. The foregoing requirement shall not apply: (a) to any portion of a party's publicly known information through no wrongful act or omission on the part of the receiving party; (b) to any such information that is already known to the receiving party at the time of the disclosure without similar non-disclosure obligations; (c) to any such information that is rightfully received by the receiving party from a third party without similar non-disclosure obligations; (d) to any such information that is approved for release by written authorization of the disclosing party; or (e) to any such information that is required to be disclosed by order of a court or government body or by applicable law, provided that the party intending to make such required disclosure shall promptly notify the other party of such intended disclosure in order to allow such party to seek a protective order or other remedy.
- VIII. **SHARS REVENUE:** SHARS revenue shall mean the following; (1) the gross Federal Share of the SHARS program's reimbursements before the allocation of gross Federal reimbursements between the State of Texas and the MISD, and (2) cash and any credits received by the State of Texas on the behalf of or for the MISD's benefit as a direct result of participating in the SHARS program.
- IX. **COMPENSATION FOR SERVICES** HISD shall be compensated by the MISD in amounts based on the fee schedule listed in "Exhibit B" attached hereto and made a part of this Agreement.

HISD shall be entitled to payment for all current and retroactive claims successfully completed and for which reimbursement has been received by the MISD. HISD shall send MISD a monthly invoice of fees due to HISD and each invoice will be due and payable to HISD within 30 days.

Claims filed retroactively in accordance with regulatory Medicaid guidelines in the Texas Medicaid Plan will be due and payable based on the current schedule listed in "Exhibit B" of this Agreement. The basis for claims filed retroactively is described in "Exhibit C" of this

Interlocal Agreement Between Houston ISD and MCALLEN INDEPENDENT SCHOOL DISTRICT re.  
SHARS Program

Agreement, which is made a part hereof. All invoices shall include appropriate documentation to support the payment. Upon termination of this Agreement, HISD shall be entitled to payment for all claims successfully transmitted to Texas Medicaid and Healthcare Partnership/Medicaid to date of termination, and as payment is received by MISD.

In the event that any federal and/or state agency shall demand return of any payments for claims previously remitted on behalf of MISD, including applicable interest, penalties, or charges related to such claims, MISD shall be responsible for reimbursement of all such amounts.

In the unforeseen event that HISD must incur substantial increases in cost for personnel and/or material to keep in compliance with new Medicaid regulations, the parties to this Agreement mutually agree to negotiate a reasonable increase in fees or costs that would be incurred by the HISD to maintain Medicaid compliance.

Both Parties, in the performance of governmental functions or services shall, respectively, render performance and make payments from current revenues legally available to the Party.

**X. EVENTS OF DEFAULT:** Upon the occurrence of an Event of Default (as hereafter defined) by either party to this Agreement, the non-defaulting party may terminate this Agreement effective thirty (30) days from the date of written notice to the defaulting party. Each of the following events constitutes an Event of Default:

- A. MISD fails to make any payments to HISD on or before the due date and fails to cure this delinquency within thirty (30) days of notice of such delinquency from HISD;
- B. MISD fails to perform or observe any other duty or obligation to be performed or observed by it under this Agreement, and such failure shall continue for thirty (30) days after written notice thereof from HISD to the MISD, or
- C. HISD fails to perform any of its duties hereunder, and such failure shall continue for thirty (30) days after written notice of such failure sent by the MISD to HISD.

**XI. CONFIDENTIALITY OF STUDENT CLINICAL OR MEDICAL DATA** MISD shall not, during or subsequent to the term of this Agreement, directly or indirectly disclose confidential information or clinical data of students from MISD to anyone other than an employee of the MISD, who requires such information to perform hereunder, or an employee of HISD, except as otherwise may be required by the terms of the Texas Public Information Act, the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), or pursuant to subpoena or court order.

Interlocal Agreement Between Houston ISD and MCALLEN INDEPENDENT SCHOOL DISTRICT re.  
SHARS Program

HISD shall not, during or subsequent to the term of this Agreement, directly or indirectly disclose confidential information or clinical data of students from the MISD to anyone other than an employee or agent of HISD who requires such information to perform hereunder, or as required in order to perform the claims Submission process, except as otherwise may be required by the terms of the Texas Public Information Act, the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), or pursuant to subpoena or court order.

No information shall be deemed confidential unless designated as such in writing by the party asserting such confidential nature, or unless designated as confidential by law under any of the aforementioned statutes or other applicable laws, rules, or regulations.

- XII. **CUSTOMER SUPPORT:** HISD will provide comprehensive client support services including the handling of all incoming customer (client) calls during normal HISD business hours regarding the SHARS program or HISD client services related to SHARS reimbursement.

Upon mutual execution of this Agreement, HISD agrees, within 15 business days, to begin formal training and/or orientation with MISD on the finance and program processes and/or procedures of this SHARS program.

- XIII. **IMMUNITY AND DISCLAIMER:** HISD does not waive or relinquish any immunity or defense on behalf of itself, and its trustees, officers, employees (paid or volunteer) and agents all in both their individual and official capacities, as a result of the execution of this Agreement and performance of the functions or obligations described herein.

The Parties expressly agree that HISD has made no warranties whatsoever, express, or implied, regarding the accuracy, dependability, or viability of the data or the SHARS program or any products related to the SHARS reimbursement process.

HISD hereby expressly disclaims, and the MISD expressly agrees to such disclaimer, of any and all express and implied warranties with regard to the SHARS program including, without limitation, any implied warranties of merchantability or fitness.

In no event shall HISD be liable for any loss, inconvenience, claims or damages, including without limitation, any damages for loss of business profits, business interruption, loss of any actual or potential SHARS reimbursements, or claims for reimbursement, or any other direct or indirect claims or causes of action, resulting from or arising out of this Agreement and the obligations herein.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against HISD.

Interlocal Agreement Between Houston ISD and MCALLEN INDEPENDENT SCHOOL DISTRICT re.  
SHARS Program

- XIV. **ERRORS AND OMISSIONS:** No accidental errors or omissions upon the part of either party shall relieve the other party of its responsibilities under this agreement, provided such errors and omissions are reported as soon after discovery as possible.
- XV. **SOLICITATION:** During the term of this Agreement, and for a period of one year thereafter, neither MISD nor HISD will solicit for employment, in areas related to Medicaid programs, any employees of the other party or its affiliates who directly participated in the work being performed hereunder.
- XVI. **NO ASSIGNMENT:** No assignment of this Agreement or of any duty or obligation of performance hereunder, shall be made in whole or in part by either party without the prior written consent of the other party.
- XVII. **SECTION HEADINGS:** The heading of sections contained in this Agreement are for convenience only, and they shall not, expressly or by implication, limit, define, extend, or construe the terms or provisions of the sections of this Agreement.
- XVIII. **NOTICE:** Any notice required to be given under the provisions of the Agreement shall be in writing and shall be duly served when it shall be hand-delivered to the addressees set out below, or shall have been deposited, duly registered or certified, return receipt requested, in a United States Post Office addressed to the other party at the following addresses:

**To: Houston Independent School District**

Attn: Millard House II  
Superintendent of Schools  
4400 West 18<sup>th</sup> Street  
Houston, Texas 77092

**Copy to:**

Attn: Glenn Reed  
Chief Financial Officer  
4400 West 18<sup>th</sup> Street  
Houston, Texas 77092

**To: MCALLEN INDEPENDENT SCHOOL DISTRICT**

Attn: Iris Luna  
Interim Chief Financial Officer  
2000 N. 23<sup>rd</sup> Street  
McAllen, TX 78501

Interlocal Agreement Between Houston ISD and MCALLEN INDEPENDENT SCHOOL DISTRICT re.  
SHARS Program

**XIX. MISCELLANEOUS:** This Agreement shall constitute the complete understanding of HISD and MISD and may not be modified in any manner without the express written consent of both parties.

If any portion of this Agreement shall be declared or held unenforceable for any reason, the remaining portions hereof shall continue in full force and effect. All exhibits attached hereto are expressly made a part of this Agreement.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date(s) set forth herein.

**[SIGNATURE PAGE TO FOLLOW]**

Interlocal Agreement Between Houston ISD and MCALLEN INDEPENDENT SCHOOL DISTRICT re.  
SHARS Program

**MCALLEN INDEPENDENT SCHOOL  
DISTRICT**

**HOUSTON INDEPENDENT  
SCHOOL DISTRICT**

By: \_\_\_\_\_ Date  
Sam Saldivar, Jr.  
Board of Trustees, President

By: Millard I. House II 04/28/2022  
Date  
Millard House II  
Superintendent of Schools

**APPROVED AS TO FUNDING/  
BUSINESS TERMS**

**APPROVED AS TO FUNDING/BUSINESS  
TERMS**

By: Glenn Reed 04/27/2022  
Date  
Glenn Reed  
Chief Financial Officer

**APPROVED AS TO FORM**

**APPROVED AS TO FORM**

By: Stephen L. Crain  
Stephen L. Crain (May 2, 2022 08:11 CDT)  
Date  
Stephen L. Crain  
Atlas, Hall & Rodriguez,  
LLP

By: Elneita Hutchins-Taylor 4-27-2022  
Date  
Elneita Hutchins-Taylor  
General Counsel

E6178

**EXHIBIT A**  
**ROLES AND RESPONSIBILITIES**

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**HOUSTON ISD/BILLING AGENT**

- 1) Assist the client district in obtaining a Medicaid Provider Identification Number.
- 2) Assist the client district in executing a provider contract as required by TMHP to file electronic claims.
- 3) Verify student eligibility for each claim submitted (**HISD pays for and maintains a direct-line access to the State Medicaid eligibility mainframe on behalf of all its school districts**).
- 4) Provide the client district with pre-printed or on-line SHARS service tickets generated from the client district's Medicaid eligible student list.
- 5) Process all required data to create and maintain student, clinician/therapist, and service files.
- 6) Process each SHARS claim generated by the client district's clinician or health care providers documenting each SHARS service provided to Medicaid eligible students.
- 7) Submit SHARS claim data to TMHP/Medicaid for SHARS reimbursement utilizing HISD billing software for electronic claims submission for which Medicaid reimbursement will be sought.
- 8) Provide the client district with support services for Claims Tracking for the client district's use in tracking monthly service tickets for SHARS Medicaid eligible students.
- 9) Issue monthly invoice for services provided to client district that discloses claims successfully processed, submitted, and subsequently paid by TMHP/Medicaid.
- 10) Maintain billing records including site storage for data stored at HISD.
- 11) Generate quarterly reports, which show: **(1)** SHARS revenue billed to date, and **(2)** SHARS revenue received to date.
- 12) Provide access to applicable documentation and records required by federal and state laws, rules and regulations, and guidelines for Medicaid or other governmental compliance.
- 13) Provide support with the Center for Medicare and Medicaid Services (CMS), Texas Health and Human Services Commission (THHSC), and Texas Education Agency (TEA) audits.
- 14) Provide client support Hot Line with free 1-800 long distance access during normal HISD business hours.
- 15) Monitor compliance with changing federal and state Medicaid laws.
- 16) Assist client district with the quarterly submission of the "Certification of Expended State Funds Letter" as required by CMS and THHSC.

## MISD / CLIENT DISTRICT

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- 1) Designate contact person(s) or coordinator to officially communicate and maintain on-going contact with the HISD
- 2) Obtain a Medicaid Provider Identification Number.
- 3) Execute a provider contract as required by TMHP to file electronic claims.
- 4) Authorize HISD to act as billing agent by executing **Billing Service Authorization per "Exhibit D"** of this Agreement.
- 5) Submit a listing, and/or data base of all of MISD's special education students for HISD to determine SHARS Medicaid eligibility, and update list as required by HISD.
- 6) Submit copies of monthly SHARS service tickets to HISD for claims processing and submission.
- 7) Maintain source documentation for a period of seven (7) years on services for which SHARS claims were filed.
- 8) Warrant to the best of the knowledge of the district, its agents, officers, and employees, the accuracy, reliability, and completeness of any and all claim information submitted to HISD.
- 9) Pay monthly invoices received from HISD for SHARS Medicaid revenue received and services provided to MISD in accordance with the **Current Fee Schedule in "Exhibit B"** of this Agreement.
- 10) Require clinicians and SHARS service providers to complete monthly pre-printed SHARS Service Tickets for monthly processing and claims submission for Medicaid reimbursement.
- 11) Authorize HISD as billing agent, by executing Release of Information as per **"Exhibit E"** to obtain a copy of the client district quarterly **"Certification of Expended State Funds Letter"** from TMHP.
- 12) Provide other information and services as required in order to successfully complete the SHARS claim process.

**EXHIBIT B  
FEE SCHEDULE**

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**HISD SERVICE FEE SCHEDULE  
MCALLEN INDEPENDENT SCHOOL DISTRICT  
ELECTRONIC CLAIM SUBMISSION**

<p><b>HISD SERVICE FEE SCHEDULE FOR CLIENT DISTRICT'S PAID CLAIMS</b></p>
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<p>4% OF ALL SHARS REIMBURSEMENT REVENUE RECEIVED, \$1200 ANNUAL ADMINISTRATIVE FEE 0% OF COST REPORT (Grandfathered Percentage)</p>
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**PLEASE NOTE:**

- 1) Service fee will only apply to PAID CLAIMS that generated Medicaid reimbursement revenue.
- 2) Annual Administrative Fee will be applied and payable on October 1<sup>st</sup> of each year.
- 3) Contract renewals will be effective **May 27th** of each consecutive year.
- 4) Payment of fees to HISD must be made on or before the due date of monthly invoice received from HISD.
- 5) Please be advised that McAllen ISD has been "Grandfathered" for a zero-percentage rate (0%) for the SHARS Cost Report.

**EXHIBIT C**  
**RETROACTIVE CLAIMS**

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For retroactive claims submitted during the period designated in the Texas Medicaid Plan, HISD shall be entitled to payment only for claims successfully completed and for which reimbursement has been received by the MISD. Billings by HISD under this agreement shall be due and payable only for claims for which MISD has received prior reimbursement. In the event that any claims are subsequently disallowed after payment to the MISD, then HISD shall reimburse MISD for fees received by HISD on any such claims. Fees due and payable will be based on the fee schedule in "**Exhibit B**" of this agreement. These terms apply only to the retroactive claim filing period as designated by the Texas Health and Human Services Commission (THHSC) and do not impact claims incurred during the current academic year.

**EXHIBIT "D"**  
**BILLING SERVICE AUTHORIZATION**

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This form authorizes the Houston Independent School District through its billing software service to act on the behalf of MISD in meeting the requirements authorized in the following paragraphs, when submitting Medicaid claims on behalf of MISD.

This is also to certify that information appearing on billings submitted by MISD for the Texas Medical Assistance Program is and will be true, accurate and complete. MISD understands that payment of any Texas Medical Assistance Program claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws. These certifications are made in accordance with requirements found at 42 Code Federal Regulations 455.18 and 455.19.

MISD also certifies that the items billed to the Texas Medical Assistance Program are and will be for services that have been and will be provided by MISD, and in cases of physician services, the services, supplies, or other items billed have been and will be medically necessary for the diagnosis or treatment of the condition of the patients, and are provided without regard to race, color, sex, national origin, age, or handicap.

Additionally, MISD agrees to keep such records as are necessary to disclose fully the extent of services provided to individuals under the Texas Medical Assistance Program and to furnish and provide access to information regarding any payment claimed for providing such services as the State Agency, Attorney General's Office, and Department of Health and Human Services (HHS) Office may request for five (5) years from date of service, or until any dispute is settled, whichever occurs first.

MISD agrees to accept the amounts paid by the Medicaid program as full payment for the services rendered for which a Medicaid benefit is provided under the Texas Medical Assistance Program.

Interlocal Agreement Between Houston ISD and MCALLEN INDEPENDENT SCHOOL DISTRICT re.  
SHARS Program

This form, to be retained in HISD files, bears MISD's original authorized signature:

**NPI # 1821215807**

Medicaid Provider Number

**MCALLEN INDEPENDENT SCHOOL  
DISTRICT**

Provider (District Name)

**2000 N. 23<sup>rd</sup> Street**

P.O. Box / Street

**McAllen, TX 78501**

City/State/Zip

**Sam Saldivar, Jr.**

Name of Authorized Representative

Authorized Signature

**Board of Trustees, President**

Title

Date

**EXHIBIT "E"**

**RELEASE OF INFORMATION**

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MCALLEN INDEPENDENT SCHOOL DISTRICT authorizes HISD, as billing agent, to obtain a copy of the quarterly "**Certification of Expended State Funds Letter**" from the Texas Medicaid and Healthcare Partnership (TMHP) at the time it is sent to the district.

EXECUTED ON: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

Sam Saldivar, Jr.  
Printed Name

Board of Trustees, President  
Title

\_\_\_\_\_  
Date

**DATA SHARING AGREEMENT**  
**Between the McAllen Independent School District**  
**and Houston Independent School District**

This Data Sharing Agreement, herein referred to as “DSA”, for confidential data sharing is entered into by and between the McAllen Independent School District (“MISD”) and **Houston Independent School District** (“Contractor”) who, as parties to the DSA, elect to accept its terms.

**PREAMBLE**

The mission of Contractor is to manage and provide Medicaid Billing and Claiming Services for the MISD’s School Health and Related Services (SHARS) Program. To that end, data is being requested as part of the DSA to fulfill the organization’s mission. Contractor agrees that the data transferred from MISD to Contractor is and shall remain the sole and exclusive property of MISD. The DSA establishes that individually identifiable health information that falls under the protection of the Health Insurance Portability and Accountability Act (“HIPAA”), data that deals with confidentiality provisions of the Patient Safety Rule, and social security numbers will not be released. Data that is released must be used consistent with the Family Education Rights and Privacy Act (FERPA), HIPAA and MISD’s policies for managing student education records and other confidential information. MISD grants Contractor license to use such data only for the following purpose and for no other purpose.

The scope of the project addressed in this DSA is limited to the use of student data solely for the purpose of Medicaid Billing and Claiming Services.

THEREFORE, the parties agree to the following terms of this DSA:

1. Data Sharing

This data shall be provided by MISD to Contractor. The format will vary depending on integration method and requirements. Any data received by Contractor pursuant to this DSA shall be destroyed when it is no longer needed for the designated purpose. Notwithstanding the foregoing, or anything contained hereto the contrary, to the extent that Contractor maintains regular backup or centralized retention of electronically created data or electronically stored information (collectively “ESI”), such ESI may be retained as necessary to comply with the existing policy for backup and archiving of ESI, so long as no information required to be kept confidential hereunder is otherwise accessible to any of Contractor’s employees, contractors or agents.

2. Confidentiality

Contractor will maintain the confidentiality of any and all student data obtained from MISD as a part of this DSA. The confidentiality requirements under this paragraph shall survive the termination or expiration of this DSA or any subsequent agreement intended to supersede this DSA. To ensure the continued confidentiality and security of the student and staff data processed, stored, or transmitted under this DSA, Contractor shall establish a system of safeguards that will at minimum include the following:

- a. Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all data, including electronically maintained or transmitted data

received from or on behalf of MISD. These measures will be extended by contract to all subcontractors used by Contractor.

- b. Contractor and its employees, subcontractors and agents involved in the handling, transmittal, and/or processing of data provided under this DSA will be required to maintain the confidentiality of all student and staff-related personally identifiable information.
- c. Procedures and systems that shall require the use of secured passwords to access computer databases used to process, store, or transmit data provided under the DSA.
- d. Procedures and systems, such as good practices for assigning passwords, shall be developed and implemented to maintain the integrity of the systems used to secure computer databases used to process, store, or transmit data provided under the DSA.
- e. Procedures and systems that ensure that all confidential student and staff data processed, stored, and/or transmitted under the provisions of this DSA shall be maintained in a secure manner that prevents the interception, diversion, or other unauthorized access to said data.
- f. The procedures and systems developed and implemented to process, store, or transmit data provided under this DSA shall ensure that any and all disclosures of confidential student and staff data comply with all provisions of federal (HIPPA, FERPA, E-Government, etc.) and Texas state laws relating to the privacy rights of students and staff as such laws are applicable to the parties to this DSA.
- g. Contractor shall return to MISD all data or any portions thereof requested by MISD, or at MISD's election and subject to clause 1 above, Contractor shall destroy all or any part of MISD's data that is within the possession or control of Contractor and shall, upon request by MISD, provide certification of such destruction.
- h. Permission shall be obtained from MISD prior to publications or disclosure of data, or other uses not outlined in this DSA.

### 3. Indemnification

To the extent permitted by law, Contractor shall hold MISD and its past and present and future trustees, officers, and employees harmless and shall indemnify all such parties against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party, occurring or in any way incident to, arising out of, or in connection with any acts of Contractor and its agents, employees, and subcontractors done in connection with this DSA.

Nothing in this DSA shall be construed to create a claim or cause of action against MISD for which it is not otherwise liable, nor to waive any immunity or defense to which MISD may be entitled nor to create an impermissible deficiency debt of MISD.

4. Right to Audit

Contractor shall provide MISD and its designees with information and access to its premises (upon giving reasonable notice) as MISD may reasonably require evidence of compliance with DSA and applicable state and federal law.

5. Entire Agreement

This document states the entire agreement between Contractor and MISD with respect to its subject matter and supersedes any previous and contemporaneous or oral representations, statements, negotiations, or agreements.

6. Execution

Each of the persons signing this DSA on behalf of a party or entity other than a natural person represents that he or she has authority to sign on behalf and to bind such party.

7. Assignment

None of the signatories to this DSA may assign their rights, duties, or obligations under this DSA, either in whole or in part, without the prior written consent of the other signatories under this DSA.

8. Severability

If any provision of this DSA is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this DSA such provision shall be fully severable. This DSA shall remain in full force and effect unaffected by such severance, provided that the severed provision(s) are not material to the overall purpose and operation of this DSA.

9. Waiver

Waiver by and signatory to this DSA of any breach of any provision of this DSA or warranty of representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this DSA shall not operate as a waiver of such right. All rights and remedies provided for in this DSA are cumulative.

10. Modification and Amendments

This DSA may be amended or modified at any time by mutual agreement of the authorized representatives of the signatories to this DSA. MISD and Contractor further agree to amend this DSA to the extent amendments are required by an applicable law or policy issued by an appropriate regulatory authority if the amendment does not materially affect the provisions of this DSA. However, if new laws, policies, or regulations applicable to MISD and Contractor are implemented which materially affect the intent of the provision of this DSA, the authorized representatives of the signatories to this DSA shall meet within a reasonable period of time, from the date of notice of such change of law, policy or regulations, to confer regarding how and/or if those laws, policies, or regulations will be applied or excepted.

11. Term of this DSA

This DSA shall be in effect for a term commencing from the effective date, which is the date when the DSA is fully executed by both parties, until the date the current business relationship ends between MISD and Contractor.

12. Governing Law

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

EXECUTED \_\_\_\_\_  
Date

**MCALLEN INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
Sam Saldivar, Jr. Date  
Board of Trustees, President

**HOUSTON INDEPENDENT SCHOOL DISTRICT**

By: Millard House II 4/20/22  
Millard House II Date  
Superintendent of Schools

**ATTEST**

By: \_\_\_\_\_  
Debbie Crane-Aliseda Date  
Board of Trustees, Secretary

**APPROVED AS TO FUNDING/BUSINESS TERMS**

By: Glenn Reed 04/20/2022  
Glenn Reed Date  
Chief Financial Officer

**APPROVED AS TO FORM**

By: Stephen L. Crain May 2, 2022  
Stephen L. Crain (May 2, 2022 08:11 CDT) Date  
Stephen L. Crain  
Atlas, Hall & Rodriguez, LLP

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Elneita Hutchins-Taylor Date  
General Counsel

OR

By: David Galbraith 4/18/22  
David Galbraith Date  
Assistant General Counsel

OR

By: \_\_\_\_\_  
Miles J. LeBlanc Date  
Assistant General Counsel

**REQUESTOR'S SIGNATURE**

By: Patrick Porter  
Patrick Porter  
Director, Data Governance

**E-DSA 115**

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** *Maira Garcia*  
Maira Garcia (May 4, 2022 08:32 CDT)

**SUPERVISOR:** *Rosalba De Hoyos*

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

*J. Alexander*

50 \_\_\_\_\_  
**Superintendent of Schools**      May 4, 2022

This document can be downloaded as a PDF to be brought to the board meeting. Once this survey is submitted by clicking "Next" at the bottom of this page, an Approval link with a response summary will be sent to the Superintendent email address provided in the survey.

Below is a summary of your responses

[Download PDF](#)

## 2022–2023 Allotment & TEKS Certification Form

In accordance with [TEC 31.04](#), school districts and charter schools are required to certify annually to the State Board of Education and the commissioner that, for each subject in the required curriculum other than physical education, students have access to instructional materials that cover all the Texas Essential Knowledge and Skills (TEKS). Districts and charters will be unable to order 2022–23 instructional materials through EMAT until the certification has been received by the Texas Education Agency (TEA).

Complete the form below, indicating the instructional materials the district has adopted or plans to adopt for the 2022–23 school year for each grade level and core subject or core course.

### Form Instructions:

The certification must be ratified by the LEA's board of trustees or governing body in an open, public-noticed meeting. The recommended steps are included below:

**1. Gather information** – Start by downloading a sample copy of the online survey to assist with collecting the information needed to complete the form. The form asks LEAs to indicate the instructional materials the LEA has adopted or plans to adopt for the 2022–23 school year for each grade level and core subject or core course, and some additional questions about instructional materials and local adoption procedures.

**2. Complete online form for approval** - The superintendent may identify a district representative to complete this survey. This may be the instructional materials coordinator or another district representative. *Note: the form will not be considered finalized until the superintendent submits final approval.*

- At the end of the survey, click *Generate Response Summary* to download and print a PDF version of the completed form which will be needed to complete step 3.

- After the PDF is generated, click *Next* to submit the draft of the survey. This will automatically send a copy of the survey to the superintendent's email address provided in the survey, with instructions for submitting final approval (step 4 below).

**3. Obtain local board approval** - The LEA may take the PDF version of the completed form to the board meeting to obtain approval. *Note: board signatures are not required to be uploaded or submitted, so LEAs should plan to maintain documentation at the local level.*

**4. Superintendent to submit approved version** - After the district representative completes the form, the superintendent will get an email requesting approval of the completed form. Using a link in the email, the superintendent may go into the form and make any changes to the draft based on the local board meeting. Once the form is completed accurately, the superintendent may select *Approve* on the last page of the survey to officially submit the LEA's response to TEA.

If you have any questions or concerns, please submit a [Help Desk Ticket](#) on the Instructional Materials and Implementation website.

## Background Information

Enter your name below.

First and Last  
Name

Maira Garcia

Enter your email address below.

Email

maira.garcia@mcallenisd.net

Select the role that best describes your position at your district or charter.

- Instructional Materials Coordinator**
- Curriculum Director
- Principal
- Administrative Assistant
- Superintendent
- Other

Select your region and district from the list below.

ESC Region

ESC 01 - Edinburg

52

District Name and Number

MCALLEN ISD, (108906)

# School Information

Enter the superintendent's name below.

First and Last  
Name

Jose Gonzalez

Enter the superintendent's email address below.

Email

jose.gonzalez@mcallenisd.net

Enter the school board president's name below.

First and Last  
Name

Sam Saldivar

Enter the school board president's email address below.

Email

samuel.saldivar@mcallednisd.net

Enter the date of the school board meeting at which the TEKS Certification Form will be presented and approved.

Date  
(MM/DD/YYYY)

05/09/2022

## Instructional Materials Information

What type of Tier 1 instructional materials (core materials made available to all students, used as the primary source of instruction, to meet the needs of all learners, and designed to cover 100% of the TEKS) does your district typically provide to teachers across grade levels and subject-areas? Choose the option(s) that best describes this for your district or charter.

*Select all that apply.*

- District-created materials following the TEKS Resource System**
- District-created materials following district-created scope and sequence**
- Teacher-created materials following the TEKS Resource System scope and sequence
- Teacher-created materials following a district-created scope and sequence
- Publisher-created materials following the publisher's scope and sequence**
- Publisher-created materials following the TEKS Resource System scope and sequence**
- Publisher-created materials following district-created scope and**

sequence

Other

Has your district or charter ever used the Texas Resource Review (TRR) to make decisions about which instructional materials to use?

- Yes
- No**
- I am not familiar with what Texas Resource Review (TRR) is.

Indicate the level of importance your district places on the following characteristics when selecting instructional materials to use in your Pre-K/RLA/math/science/social studies classrooms.

	Not Important	Low Importance	Moderately Important	Very Important
Will be engaging or compelling to students	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Offer activities at appropriate level of challenge for students	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Are easy for teachers to implement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Are easy to adapt to meet all students' needs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Includes ample supports for English Learners	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Are aligned to the TEKS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Select the assessment platform (if any) your district leverages for unit/module, diagnostic, or interim, and for which type of assessments.

	Select the assessment(s) your district requires or encourages in the platform(s) below.				
	Interim	Diagnostic	Unit/Module	STAAR Interim	Other
<b>Eduphoria</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>DMAC</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Texas Formative Assessment Resource</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Performance Matters</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter platform below)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## The Children's Internet Protection Act

The **Children's Internet Protection Act** (CIPA) was enacted by Congress in 2000 to address concerns about children's access to obscene or harmful content over the Internet. (You may find more information on the [FCC website](#).)

It is the intent of the Legislature that the State Board of Education ensure that any instructional materials and technology purchased using funds disbursed from the State Instructional Materials and Technology Fund meet the requirements for certification under 47 U.S.C. Sections 254(h)(5)(B) and (C) to the extent the certification is applicable to those materials. (See [S.B. No. 1, General Appropriations Act, Eighty-seventh Legislature](#))

Does your district or charter have a filter or a monitor in place to ensure that students accessing digital instructional materials do not have access to obscene or harmful content?

- No
- Yes**

## Phonics Products

Select the statement that best describes how phonics materials are used within your district?

- We select phonics material at the district-level, and all campuses are required to use the same phonics curriculum.**
- We select phonics material at the district-level. These materials are available as a resource but is not required for use at each campus.
- We recommend a list of specific phonics material at the district-level. Campus leaders can select from this recommended list.
- Campus leaders determine use of phonics material.
- Teachers determine use of phonics material and create or source their own materials.
- We do not currently have phonics material in our district.
- Other

Select the statement(s) that reflect(s) the type of phonics material used in your district.

*Select all that apply*

	Phonics For English Check all that apply	Phonics For Spanish Check all that apply
Our district uses a publisher-created phonics material as a part of the core RLA materials.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Our district uses a publisher-created phonics material as supplemental to the core RLA materials.	<input type="checkbox"/>	<input type="checkbox"/>
Our district uses district-created phonics material.	<input type="checkbox"/>	<input type="checkbox"/>
Teachers write their own phonics materials.	<input type="checkbox"/>	<input type="checkbox"/>
Our district uses the TEKS Resource System (TRS).	<input type="checkbox"/>	<input type="checkbox"/>

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **K–5 Phonics** instruction next school year to ensure coverage of 100% of the phonics-related TEKS.

If your district or charter does not use the materials listed, select "Other" and enter the Publisher, Title, and TEKS %, separated by a dash, in the text box.

	Check products used for grade K–5 phonics
95% Group	<input type="checkbox"/>
American Reading Company	<input type="checkbox"/>
Amplify - Amplify Texas Skills Unit (TEA Available Materials)	<input checked="" type="checkbox"/>
Amplify - Amplify Texas Core Product	<input type="checkbox"/>
Amplify Education CKLA	<input type="checkbox"/>
Benchmark Education Company - Benchmark Phonics	<input type="checkbox"/>
Catawaba Press - Puzzle Piece Phonics	<input type="checkbox"/>
Center for the Collaborative Classroom - Collaborative Literacy	<input type="checkbox"/>
EDUSPARK - Lengua, Ritmo, y Cultura	<input type="checkbox"/>
Esperanza/Valley Speech	<input type="checkbox"/>
Estrellita, Inc. - Accelerated Spanish Reading Program	<input type="checkbox"/>
Express Readers Foundational Reading Program	<input type="checkbox"/>
FlyLeaf	<input type="checkbox"/>
Go Phonics	<input type="checkbox"/>
Heinemann - Fountas & Pinnell	<input checked="" type="checkbox"/>
Heinemann - Units of Study	<input type="checkbox"/>
HMH - Arriba la lectura	<input checked="" type="checkbox"/>
HMH - Into Reading	<input checked="" type="checkbox"/>
HMH - Saxon Phonics & Spelling	<input type="checkbox"/>
InterEthnic, LLC - Alphabet Harbor Phonics	<input type="checkbox"/>
IStation - Istation Reading	<input type="checkbox"/>
IStation - Istation Reading en Espanol	<input type="checkbox"/>

Check products used for grade K–5  
phonics

Jolly Learning - Jolly Phonics	<input type="checkbox"/>
Jossey-Bass - Phonics Pathways	<input type="checkbox"/>
Kinestemus - Kinestem Program	<input type="checkbox"/>
Learning A–Z - Raz Plus	<input type="checkbox"/>
Learning Dynamics	<input type="checkbox"/>
Letterland International Ltd. - Letterland	<input type="checkbox"/>
Lexia Learning Systems, LLC - Lexia® Core5® Reading	<input type="checkbox"/>
LifeLong Readers	<input type="checkbox"/>
Lucy Calkins - Units of Study for Teaching Phonics Grades	<input type="checkbox"/>
McGraw Hill - Open Court Reading	<input type="checkbox"/>
McGraw Hill - Reading Mastery	<input type="checkbox"/>
McGraw Hill - Texas Maravillas	<input type="checkbox"/>
McGraw Hill - Texas Wonders	<input type="checkbox"/>
Mondo (Carnegie) - Bookshop Fonetica	<input type="checkbox"/>
Nessy	<input type="checkbox"/>
Neuhaus Education Center - Basic Language Skills	<input type="checkbox"/>
Neuhaus Education Center - Reading Readiness	<input type="checkbox"/>
Neuhaus Education Center - Scientific Spelling	<input type="checkbox"/>
NINE Enterprises - Johnny Can Spell	<input type="checkbox"/>
Open Up Resources - Differentiated Instruction Block	<input type="checkbox"/>
Open Up Resources - EL Education Foundational Skills Block	<input type="checkbox"/>
Paradigm - Alpha Phonics	<input type="checkbox"/>
Phyllis Schlafly - Turbo Reader	<input type="checkbox"/>
Play and Talk International - Play and Talk	<input type="checkbox"/>
Puzzle Piece Phonics	<input type="checkbox"/>
Reading Horizons - Discovery	<input type="checkbox"/>
Really Great Reading Company, LLC - Phonics Suite	<input type="checkbox"/>
Rosen - LevelUP	<input type="checkbox"/>
Savvas Learning Company - Savvas Essentials: Foundational Reading	<input type="checkbox"/>
Savvas Learning Company - Texas mi Vision Lectura	<input type="checkbox"/>
Savvas Learning Company - Texas myView Literacy	<input type="checkbox"/>
Savvas Learning Company - Words Their Way	<input type="checkbox"/>
School Specialty - Alphabetic Phonics	<input type="checkbox"/>
Wilson - Foundations	<input type="checkbox"/>
Zaner-Bloser - SuperKids	<input type="checkbox"/>
Zoo Phonics	<input type="checkbox"/>
<b>N/A</b>	<input type="checkbox"/>
Our district does not use phonics materials	<input type="checkbox"/>

**Other**

Enter the product as "*Publisher - Title*"

**Other**

Enter the product as "*Publisher - Title*"

**Other**

Enter the product as "Publisher - Title"

For each content area and grade level below, enter the approximate number of instructional minutes in a given day that your district spends teaching RLA, for each language.

*\*Note that "Core" should account for all RLA instruction components, including phonics.*

	Phonics			
	Grade K	Grade 1	Grade 2	Grade 3 (if applicable)
English	15-30	15-30	15-30	15
Spanish	15-30	15-30	15-30	15
Other Languages				

	Core RLA					
	Grade K	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
English	120	120	120	90-120	90-120	90-120
Spanish	120	120	120	90-120	90-120	90-120
Other Languages						

Would you request all phonics products listed previously and/or other products used by Texas educators be reviewed for quality?

*Select all that apply.*

**Request that all phonics materials listed previously receive quality reviews**

Request that a specific product receive a review:  
Enter the product below as "Publisher - Title"

Request that a specific product receive a review:  
Enter the product below as "Publisher - Title"

Request that a specific product receive a review:  
Enter the product below as "Publisher - Title"

# RLA Products

Does your district or charter allow RLA instructional materials decisions to be made at the school level?

- Yes, school leaders decide on which RLA instructional materials are used (with or without district recommendations).
- No, RLA instructional materials are a district-level decision.**

TEKS percentages have already been determined for the K–5 English RLA products listed in the table below, and these products have been pre-populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %					
	Grade K	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
<b>American Reading Company -</b> American Reading Company	92.86	93.33	95.16	98.46	96.86	93.65
<b>Amplify -</b> Amplify Texas (THL Program)	100	100	100	100	100	100
<b>Amplify -</b> Amplify Education CKLA	94.64	93.33	80.65	90.77	98.41	94.64
<b>Center for the Collaborative Classroom -</b> Collaborative Literacy	76.79	78.33	72.58	81.54	85.71	80.95
<b>HMH -</b> Texas Houghton Mifflin Harcourt Into Reading	100	100	100	100	100	100
<b>Imagination Station, Inc./istation -</b> Istation Reading	94.64	96.67	98.39	100	93.65	100
<b>Learning A-Z, LLC. -</b> Raz-Plus ELL Edition	92.86	98.33	100	67.69	93.65	85.71
<b>McGraw-Hill School Division -</b> Texas Wonders	100	100	100	100	100	100
<b>Savvas (formerly Pearson Education) -</b> Texas myView Literacy	100	100	100	100	100	100

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **K–5 English RLA** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the following question.*



The district uses RLA materials for these grades	Check the product(s) used for grade K–5 English RLA
<b>American Reading Company -</b> American Reading Company (ARC)	<input type="checkbox"/>
<b>Amplify -</b> Amplify Texas Elementary Literacy Program (TEA Available Materials)	<input checked="" type="checkbox"/>
<b>Amplify -</b> Amplify Education CKLA	<input type="checkbox"/>
<b>Center for the Collaborative Classroom -</b> Collaborative Literacy	<input type="checkbox"/>
<b>HMH -</b> Texas Houghton Mifflin Harcourt Into Reading	<input checked="" type="checkbox"/>
<b>Imagination Station, Inc./Istation -</b> Istation Reading	<input type="checkbox"/>
<b>Learning A-Z, LLC. -</b> Raz-Plus ELL Edition	<input type="checkbox"/>
<b>McGraw-Hill School Division -</b> Texas Wonders	<input type="checkbox"/>
<b>Savvas (formerly Pearson Education) -</b> Texas myView Literacy	<input type="checkbox"/>
<b>StrongMind -</b> Texas English Language Arts	<input type="checkbox"/>
<b>The College Board -</b> SpringBoard, English Language Arts, 2020 Texas Edition	<input type="checkbox"/>
<b>ThinkCERCA -</b> ThinkCERCA, Texas Edition	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>

Does your district use the selected materials to cover 100% of the English K–5 RLA TEKS?

**Yes**

No

○ No, we use supplemental materials to cover the TEKS.

TEKS percentages have already been determined for the K–5 Spanish RLA products listed in the table below, and these products have been pre-populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %					
	Grade K	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
<b>American Reading Company</b> - ARC Core en Espanol	93.62	94.12	96.77	-	-	-
<b>EDUSPARK, INC.</b> - Lengua, Ritmo y Cultura KIT	100	100	-	-	100	98.44
<b>HMH</b> - Texas Houghton Mifflin Harcourt ¡Arriba la lectura!	100	100	100	100	100	100
<b>Imagination Station, Inc./istation</b> - Istation Reading en Espanol	78.79	90.00	91.07	92.19	93.75	78.79
<b>McGraw-Hill School Division</b> - Texas Maravillas	100	100	100	100	100	100
<b>Savvas (formerly Pearson Education)</b> - Texas miVisión Lectura, Grade	100	100	100	100	100	100
<b>Vista Higher Learning</b> - Listos! + Antologias	70.21	54.90	69.29	86.36	62.50	75.00

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **K–5 Spanish RLA** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in a separate question.*

Check the product(s) used for grade K–5 Spanish RLA

**N/A -**

We do not use Spanish RLA materials for these grades

**American Reading Company**

-  
ARC Core en Espanol

**Amplify -**

Amplify Texas Lectoescritura en Espanol (TEA Available Materials)

**EDUSPARK, INC. -**

Lengua, Ritmo y Cultura KIT

61

**HMH -**

Texas Houghton Mifflin Harcourt ¡Arriba la

lectura!

Check the product(s) used for grade K–5

Spanish RLA

**Imagination Station, Inc./Istation -**

Istation Reading en Español

**McGraw-Hill School Division**

-

Texas Maravillas

**Savvas (formerly Pearson Education)**

-

Texas miVisión Lectura

**Vista Higher Learning -**

Listos! + Antologías

**Other**

(Enter as "Publisher - Title")

**Other**

(Enter as "Publisher - Title")

**Other**

(Enter as "Publisher - Title")

Does your district use the selected materials to cover 100% of the Spanish K–5 RLA TEKS?

**Yes**

No, we use supplemental materials to cover the TEKS.

TEKS percentages have already been determined for the 6–8 English RLA products listed in the table below, and these products have been pre-populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %		
	Grade 6	Grade 7	Grade 8
<b>EMC Publishing, LLC. -</b> Mirrors & Windows: Connecting with Literature	100	100	100
<b>HMH -</b> Texas Houghton Mifflin Harcourt Into Literature	100	100	100
<b>Imagination Station, Inc./Istation -</b> Istation Reading	96.83	100	87.50
<b>McGraw-Hill School Division -</b> Texas StudySync	100	100	100
<b>Perfection Learning Corporation -</b>			

<b>Perfection Learning Corporation -</b> Texas Connections	100	100	100
<b>Savvas (formerly Pearson Education) -</b> myPerspectives Texas English Language Arts	100	100	100
<b>StrongMind -</b> Texas English Language Arts	80.95	82.54	81.25
<b>The College Board -</b> SpringBoard, English Language Arts, 2020 Texas Edition	100	100	100
<b>ThinkCERCA -</b> ThinkCERCA, Texas Edition	93.65	93.65	93.75

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **6–8 English RLA** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the following question.*

Check the product(s) used for grade 6–8 RLA

**N/A -**

We do not use RLA materials for these grades

**Amplify -**

Amplify ELAR Texas (TEA Available Materials)

**EMC Publishing, LLC. -**

Mirrors & Windows: Connecting with Literature

**HMH -**

Texas Houghton Mifflin Harcourt Into Literature

**Imagination Station, Inc./Istation -**

Istation Reading

**McGraw-Hill School Division -**

Texas StudySync

**Perfection Learning Corporation -**

Texas Connections

**Savvas (formerly Pearson Education) -**

myPerspectives Texas English Language Arts

**StrongMind -**

Texas English Language Arts

**The College Board -**

SpringBoard, English Language Arts, 2020 Texas Edition

**Other**

(Enter as "Publisher - Title")



**Other**

(Enter as "Publisher - Title")



**Other**

(Enter as "Publisher - Title")



Does your district use the selected materials to cover 100% of the 6–8 RLA TEKS?

- Yes**
- No, we use supplemental materials to cover the TEKS.

TEKS percentages have already been determined for the 9–12 English RLA products listed in the table below, and these products have been pre-populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %			
	English I	English II	English III	English IV
<b>Bedford, Freeman and Worth Publishing Group -</b> Foundations of Language and Literature	98.39	82.26	-	-
<b>BetterRhetor Resources, LLC. -</b> College-Ready Writing Essentials	-	-	57.81	57.81
<b>EMC Publishing, LLC. -</b> Mirrors & Windows: Connecting with Literature	100	100	100	100
<b>HMH -</b> HMH Into Literature Texas	100	100	100	100
<b>McGraw-Hill School Division -</b> StudySync Texas	100	100	100	100
<b>Savvas (formerly Pearson Education, Inc.) -</b> myPerspectives Texas English Language Arts	100	100	100	100
<b>Perfection Learning Corporation -</b> Texas Connections	100	100	100	100
<b>Shmoop University, Inc. -</b> ELA: Introduction to Literature	87.10	85.48	78.13	95.31
<b>Strong Mind -</b> Texas English Language Arts	100	100	98.44	100
<b>The College Board -</b> SpringBoard, English Language Arts, Texas Edition	100	100	100	100

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **9–12 English RLA** instruction next

school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the following question.*

Check the product(s) used for grade 9–12  
RLA

**N/A -**

We do not use RLA materials for these grades

**Bedford, Freeman and Worth Publishing Group**

-  
Foundations of Language and Literature

**BetterRhetor Resources, LLC.**

-  
College-Ready Writing Essentials

**EMC Publishing, LLC. -**

Mirrors & Windows: Connecting with Literature

**HMH -**

HMH Into Literature Texas

**McGraw-Hill School Division**

-  
StudySync Texas

**Odell Education-**

Odell Texas High School Literacy

**Perfection Learning Corporation**

-  
Texas Connections

**Savvas (formerly Pearson Education, Inc.)**

-  
myPerspectives Texas English Language Arts

**Shmoop University, Inc. -**

ELA: Introduction to Literature

**Strong Mind -**

Texas English Language Arts

**The College Board -**

SpringBoard, English Language Arts, Texas Edition

**Other**

(Enter as "Publisher - Title")

**Other**

(Enter as "Publisher - Title")

65

**Other**

(Enter as "Publisher - Title")

Does your district use the selected materials to cover 100% of the 9–12 RLA TEKS?

- Yes**
- No, we use supplemental materials to cover the TEKS.

## RLA Supplemental Products

Select which additional and/or supplemental instructional materials (beyond core, Tier 1 curricular materials) that teachers in your district or charter will likely regularly use (once a week or more on average) for each grade band of **K–12 RLA** instruction next school year.

	Grade K–5	Grade 6–8	Grade 9–12
<b>N/A -</b> We do not use supplemental materials RLA for these grades	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Locally Developed Materials</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Teacher-created materials</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Teachers Pay Teachers</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>TEKS Resource System (TRS)</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Amplify Reading Texas</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Benchmark Education</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>BrainPop!</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Heinemann</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>IXL</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Kahoot!</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Lucy Calkins</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Renaissance Learning</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>ThinkUp</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>YouTube</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Writers' Workshop</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title")	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Grade K–5	Grade 6–8	Grade 9–12
<input type="text" value="Education Galaxy"/> <b>Other</b> (Enter as "Publisher - Title")	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="text" value="Scholastic News"/>			
<b>Other</b> (Enter as "Publisher - Title")	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text" value="iReady"/>			
<b>Other</b> (Enter as "Publisher - Title")	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text" value="Smarty Ants"/>			
<b>Other</b> (Enter as "Publisher - Title")	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="text" value="No Red Ink"/>			

Would you request all RLA products listed previously and/or other products used by Texas educators be reviewed for quality?

**Request that all RLA materials listed above receive quality reviews**

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

## Math Products

Does your district or charter allow math instructional materials decisions to be made at the school level?

Yes, school leaders decide on which Math instructional materials are used (with or without district recommendations).

**No, Math instructional materials are a district-level decision.**

TEKS percentages have already been determined for the K–5 math products listed in the table below, and these products have been pre-populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %					
	Grade K	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
<b>Accelerate Learning -</b> STEMscopes Texas Math	100	100	100	100	100	100
<b>HMH -</b> Texas Go Math!	100	100	100	100	100	100
<b>HMH -</b> Texas Go Math! (Spanish)	100	100	100	100	100	100
<b>Origo Education -</b> Stepping Stones	88.89	92	88	88.68	90.57	80.43
<b>Origo Education -</b> Stepping Stones (Spanish)	88.89	92	88	88.68	90.57	80.43
<b>Savvas (formerly Person Education, Inc.) -</b> enVisionMATH Texas 2.0	100	100	100	100	100	100
<b>Savvas (formerly Person Education, Inc.) -</b> enVisionMATH Texas 2.0 en español	100	100	100	100	100	100
<b>TPS Publishing -</b> Creative Mathematics Curriculum	72.22	68	86	94.34	90.57	78.26

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for K–5 math instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the following question.*

Check the product(s) used for grade K–5 math

**N/A -**

We do not use Math materials for this grade

**Accelerate Learning -**  
STEMscopes Texas Math

**Great Minds-**  
Eureka Math TEKS Edition

**HMH -**  
Texas Go Math!

**HMH -**  
Texas Go Math!  
(Spanish)

**Origo Education**  
-  
Stepping Stones

Origo Education -  
Stepping Stones  
(Spanish)

Check the product(s) used for grade  
K–5 math

**Savvas (formerly Person Education, Inc.)**

-  
enVisionMATH Texas 2.0

**Savvas (formerly Person Education, Inc.)**

-  
enVisionMATH Texas 2.0 en español

**TPS Publishing -**

Creative Mathematics Curriculum

**Other**

(Enter as "Publisher - Title")

Pearlized Math

**Other**

(Enter as "Publisher - Title")

Sharon Wells Mathematics

**Other**

(Enter as "Publisher - Title")

Does your district use the selected materials to cover 100% of the K–5 math TEKS?

**Yes**

No, we use supplemental materials to cover the TEKS.

TEKS percentages have already been determined for the 6–8 math products listed in the table below, and these products have been pre-populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %		
	Grade 6	Grade 7	Grade 8
<b>Agile Mind -</b> Agile Mind Mathematics	-	86	75
<b>Carnegie Learning -</b> Texas Middle School Math	100	100	100
<b>Edusmart -</b> Math Texas	100	100	100
<b>HMH -</b> Texas Go Math!	100	100	100
<b>McGraw-Hill -</b> Texas Math	100	100	100

Texas Math			
<b>Savvas (formerly Pearson Education, Inc.) - digits, Texas Edition</b>	100	100	100
<b>Texas State University - Math Explorations Part 1–3</b>	94.92	98	94.23
<b>The College Board - SpringBoard Mathematics, Course 1–3</b>	100	100	100
<b>TPS Publishing - Creative Mathematics Curriculum</b>	54.24	76	82.69

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **6–8 math** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the following question.*

Check the product(s) used for grade 6–8 math

**N/A -**

We do not use Math materials for this grade

**Agile Mind -**

Agile Mind Mathematics

**Carnegie Learning -**

Texas Middle School Math

**Edusmart -**

Math Texas

**HMH -**

Texas Go Math!

**McGraw-Hill -**

Texas Math

**Savvas (formerly Pearson Education, Inc.)**

-  
digits, Texas Edition

**Texas State University -**

Math Explorations Part 1–3

**The College Board -**

SpringBoard Mathematics, Course 1–3

**TPS Publishing -**

Creative Mathematics Curriculum

Other  
(Enter as "Publisher - Title")

Check the product(s) used for grade 6–8 math

Other  
(Enter as "Publisher - Title")

Other  
(Enter as "Publisher - Title")

Does your district use the selected materials to cover 100% of the 6–8 math TEKS?

Yes

No, we use supplemental materials to cover the TEKS.

TEKS percentages have already been determined for the 9–12 math products listed in the table below, and these products have been pre-populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %			
	Algebra 1	Algebra 2	Geometry	PreCalculus
<b>Agile Mind -</b> Algebra 1	100	100	100	98.21
<b>BFW Publishing -</b> Sapling Learning	100	-	100	-
<b>Big Ideas Learning -</b> Big Ideas Learning Math	100	-	100	-
<b>Carnegie Learning -</b> Texas Algebra 1/Algebra 2/Geometry	100	100	100	-
<b>Cengage Learning -</b> PreCalculus + Limits				55.36
<b>CORD Communications -</b> Algebra 2	-	100	-	-
<b>HMH -</b> HMH Algebra 1/Algebra 2/Geometry	100	100	100	-
<b>Kendall/Hunt Publishing Company -</b> Precalculus with Trigonometry	-	-	-	76.79
<b>McGraw-Hill -</b> Texas Algebra 1/Algebra 2/Geometry/Precalculus	100	100	100	100
<b>Sapling Learning -</b> Algebra 2		100		
<b>Savvas (formerly Pearson Education, Inc.) -</b> Texas Algebra 1/Algebra 2/Geometry/Precalculus	100	100	100	100

<b>The College Board -</b> SpringBoard Mathematics	100	98.18	100	78.57
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Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **9–12 math** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the following question.*

Check the product(s) used  
for grade 9–12 math

- N/A -**  
We do not use Math materials for this grade
- Agile Mind**  
-   
Algebra 1
- BFW Publishing -**  
Sapling Learning
- Big Ideas Learning -**  
Big Ideas Learning   
Math
- Carnegie Learning -**  
Texas Algebra 1/Algebra   
2/Geometry
- Cengage Learning -**  
PreCalculus + Limits
- CORD Communications -**  
Algebra 2
- HMH -**  
HMH Algebra 1/Algebra   
2/Geometry
- Kendall/Hunt Publishing Company -**  
Precalculus with Trigonometry
- McGraw-Hill -**  
Texas Algebra 1/Algebra   
2/Geometry/Precalculus
- Sapling Learning -**  
Algebra 2
- Savvas (formerly Pearson Education, Inc.)-**  
Texas Algebra 1/Algebra   
2/Geometry/Precalculus
- The College Board -**  
SpringBoard Mathematics
- Other**  
(Enter as "Publisher - Title")

**Other**  
(Enter as "Publisher - Title")

Check the product(s) used  
for grade **9**–12 math

**Other**  
(Enter as "Publisher - Title")

Does your district use the selected materials to cover 100% of the 9–12 math TEKS?

**Yes**

No, we use supplemental materials to cover the TEKS.

## Math Supplemental Products

Select which additional and/or supplemental blended learning products teachers in your district or charter will likely regularly use (once a week or more on average) for each grade band of K–12 math instruction next school

	Grade K-5	Grade 6-8	Grade 9-12
<b>N/A-</b> We do not use a blended learning model in math for this grade band	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Zearn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ST Math	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MATHia (by Carnegie Learning)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dreambox	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Imagine Math	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iReady	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IXL Math	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Teach to One	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iStation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title")	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="text" value="Maneuvering the Middle"/>			
<b>Other</b> (Enter as "Publisher - Title")	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="text" value="Region IV Math Materials"/>			
<b>Other</b> (Enter as "Publisher - Title")	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="text" value="STAAR Master"/>			

Select which additional and/or supplemental instructional materials (beyond core, Tier 1 curricular materials) that teachers in your district or charter will likely regularly use (once a week or more on average) for each grade band of **K–12 math** instruction next school year.

	Grade K–5	Grade 6–8	Grade 9–12
<b>N/A -</b> We do not use supplemental math materials for this grade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Locally Developed Materials</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Teacher-created materials</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Teachers Pay Teachers</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>TEKS Resource System (TRS)</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>BrainPop!</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Freckle Math</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>IXL</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Kahoot!</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>MATHia</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>ST Math</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>ThinkUp</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>YouTube</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Zearn Math</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Would you request all math products listed previously and/or other products

would you request all math products listed previously and/or other products used by Texas educators be reviewed for quality?

**Request that all math materials listed above receive quality reviews**

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

## Social Studies Products

Does your district or charter allow social studies instructional materials decisions to be made at the school level?

Yes, school leaders decide on which Social Studies instructional materials are used (with or without district recommendations).

**No, Social studies instructional materials are district-level decision.**

TEKS percentages have already been determined for the K–5 social studies products listed in the table below, and these products have been pre-populated as options in the proceeding question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %					
	Grade K	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
American Legacy Publishing dba Studies Weekly - Texas/USA Studies Weekly	81.58	64.71	77.19	76.27	81.25	67.9
American Legacy Publishing dba Studies Weekly - Texas/USA Studies Weekly (Spanish)	78.95	72.55	66.67	69.49	100	65.43
Nystrom Education   Social Studies School Service - Exploring Where and Why; Stratalogica	75 86.84	76.47	78.95	77.97	-	-
Savvas (formerly Pearson Education, Inc.) - Texas MyWorld Social Studies	100	100	100	100	100	100

<b>Savvas (formerly Pearson Education, Inc.) - Texas MyWorld Social Studies en español (Spanish)</b>	100	100	100	100	100	100
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Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for each grade level of **K–5 social studies** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the proceeding question.*

Check the product(s) used for grade K–5 social studies

**N/A -**

We do not use social studies materials for this grade

**American Legacy Publishing dba Studies Weekly**

- Texas/USA Studies Weekly

**American Legacy Publishing dba Studies Weekly -**

Texas/USA Studies Weekly (Spanish)

**Nystrom Education | Social Studies School Service**

- Exploring Where and Why; Stratologica

**Savvas (formerly Pearson Education, Inc.)**

- Texas MyWorld Social Studies

**Savvas (formerly Pearson Education, Inc.)-**

Texas MyWorld Social Studies en español (Spanish)

**Other**

(Enter as "Publisher - Title")



**Other**

(Enter as "Publisher - Title")



**Other**

(Enter as "Publisher - Title")



Does your district use the selected materials to cover 100% of the K–5 social studies TEKS?

**Yes**

No, we use supplemental materials to cover the<sup>76</sup> TEKS.

TEKS percentages have already been determined for the 6–8 social studies products listed in the table below, and these products have been pre-populated as options in the proceeding question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %		
	Grade 6 World Geo	Grade 7 TX History	Grade 8 US History
<b>Cengage Learning, Inc./National Geographic Learning -</b> World Cultures and Geography, MYNGCONNECT	100	-	-
<b>Discovery Education, Inc. -</b> Discovery Education Social Studies Techbook	100	-	100
<b>HMH -</b> World Studies/Texas History/US History	100	100	100
<b>McGraw-Hill School Education LLC -</b> World Cultures and Geography/Texas History/US History	100	100	100
<b>Savvas (formerly Pearson Education, Inc.) -</b> Texas Contemporary World Cultures/Texas History/US History	100	100	100
<b>Social Studies School Service -</b> Active Classroom: Global Studies; Geography/US History	76.83	-	100

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for each grade level of **6–8 social studies** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the proceeding question.*

Check the product(s) used for grade  
6–8 social studies

**N/A -**

We do not use social studies materials for this grade

**Cengage Learning, Inc./National Geographic Learning**

-  
World Cultures and Geography, MYNGCONNECT

**Discovery Education, Inc. -**

Discovery Education Social Studies  
Techbook

**HMH -**

World Studies/Texas History/US  
History

**McGraw-Hill School Education LLC -**

World Cultures and Geography/Texas History/US History

Check the product(s) used for grade 6–8 social studies

**Savvas (formerly Pearson Education, Inc.)-**  
Texas Contemporary World Cultures/Texas History/US History

**Social Studies School Service -**  
Active Classroom: Global Studies; Geography/US History

**Other**  
(Enter as "Publisher - Title")



**Other**  
(Enter as "Publisher - Title")



**Other**  
(Enter as "Publisher - Title")



Does your district use the selected materials to cover 100% of the 6–8 social studies TEKS?

- Yes**
- No, we use supplemental materials to cover the TEKS.

TEKS percentages have already been determined for the 9–12 social studies products listed in the table below, and these products have been pre-populated as options in the proceeding question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %			
	US Govt.	US History	World Geography	World History
<b>Discovery Education, Inc. -</b> Discovery Education Social Studies Techbook	-	100	-	-
<b>HMH -</b> HMH The Americans/World Geography/World History	-	100	100	100
<b>McGraw-Hill School Education LLC -</b> United States Government/US History/World Geography/World History	100	100	100	100
<b>Savvas (formerly Pearson Education, Inc.) -</b> Texas Magruder's American Government/US History/World History	100	100	-	-
<b>Perfection Learning -</b> Basic Principles of American Government	100	-	-	-
<b>Social Studies School Service -</b> Active Classroom: Government/Civics/US History/Global Studies/Geography/World History	86.25	90	79.1	100
<b>WorldView Software</b>				

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for each grade level of **9–12 social studies** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the proceeding question.*

	Check the product(s) used for grade 9–12 social studies
<b>N/A -</b> We do not use social studies materials for this grade	<input type="checkbox"/>
<b>Discovery Education, Inc. -</b> Discovery Education Social Studies Techbook	<input type="checkbox"/>
<b>HMH -</b> HMH The Americans/World Geography/World History	<input checked="" type="checkbox"/>
<b>McGraw-Hill School Education LLC -</b> United States Government/US History/World Geography/World History	<input checked="" type="checkbox"/>
<b>Savvas (formerly Pearson Education, Inc.)-</b> Texas Magruder's American Government/US History/World History	<input type="checkbox"/>
<b>Perfection Learning -</b> Basic Principles of American Government	<input type="checkbox"/>
<b>Social Studies School Service -</b> Active Classroom: Government/Civics/US History/Global Studies/Geography/World History	<input type="checkbox"/>
<b>WorldView Software -</b> U.S. Government: An Interactive Approach	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title") <input type="text"/>	<input type="checkbox"/>

Does your district use the selected materials to cover 100% of the 9–12 social studies TEKS?

● Yes

○ No, we use supplemental materials to cover the TEKS.

## Supplemental Social Studies Products

Select which additional and/or supplemental instructional materials (beyond core, Tier 1 curricular materials) that teachers in your district or charter will likely regularly use (once a week or more on average) for each grade level of **K–12 social studies** instruction next school year.

	Grade K–5	Grade 6–8	Grade 9–12
<b>N/A -</b> We do not use supplemental social studies materials for these grades	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Locally Developed Materials</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Teacher-created materials</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Teachers Pay Teachers</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>TEKS Resource System (TRS)</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>BrainPop!</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>IXL</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Kahoot!</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Newsela</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Social Studies Alive!</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Studies Weekly</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>ThinkUp</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>YouTube</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title")	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text" value="Scholastic News"/>			
<b>Other</b> (Enter as "Publisher - Title")	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="text" value="Social Studies School Service-Active Classroom"/>			
<b>Other</b> (Enter as "Publisher - Title")	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="text" value="Jarrett Publishing Mastering the TEKS US History"/>			
<b>Other</b> (Enter as "Publisher - Title")	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>			
<b>Other</b>			

Other  
(Enter as "Publisher - Title")

Grade K-5

Grade 6-8

Grade 9-12

Would you request all social studies products listed previously and/or other products used by Texas educators be reviewed for quality?

**Request that all social studies materials listed above receive quality reviews**

Request that a specific product receive a review:  
Enter the product below as "Publisher - Title"

Request that a specific product receive a review:  
Enter the product below as "Publisher - Title"

Request that a specific product receive a review:  
Enter the product below as "Publisher - Title"

Request that a specific product receive a review:  
Enter the product below as "Publisher - Title"

## Science Products

Does your district or charter allow science instructional materials decisions to be made at the school level?

Yes, school leaders decide on which science instructional materials are used (with or without district recommendations).

**No, Science instructional materials are a district-level decision.**

TEKS percentages have already been determined for the K-5 science products listed in the table below, and these products have been pre-populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %					
	Grade K	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5
Adaptive Curriculum - AC Science Grade	81	-	-	-	-	100
Delta Education LLC - FOSS Texas Edition	100	100	100	100	100	100

<b>Delta Education LLC -</b> FOSS Texas Edition, Spanish	-	100	-	-	-	-
<b>Discovery Education, Inc. -</b> Discovery Education Science Techbook	100	100	100	100	100	100
<b>Edumatics Corporation -</b> Edusmart Science Texas	100	100	100	97.14	100	100
<b>HMH -</b> Texas ScienceFusion	100	100	100	100	100	100
<b>HMH -</b> Texas ScienceFusion (Spanish)	100	100	100	100	100	100
<b>Knowing Science LLC -</b> Core Science Curriculum and STEM Kit	100	69.7	80	-	50	-
<b>L.J. Create -</b> SciTEX Living With Science	100	100	100	100	100	100
<b>LAZEL, Inc. dba ExploreLearning -</b> ExploreLearning Science Gizmos	-	-	-	-	-	63.16
<b>Millmark Education Corporation, Inc. -</b> CL Digital Online Curriculum, TX	-	-	57.14	77.14	84.38	100
<b>Savvas (formerly Pearson Education) -</b> Texas Interactive Science	100	100	100	100	100	100
<b>Savvas (formerly Pearson Education) -</b> Texas Interactive Science en español	100	100	100	100	100	100
<b>STEMscopes, Incorporated -</b> STEMscopes 2.0	100	100	100	100	100	100
<b>TPS Publishing Inc -</b> Creative Science Curriculum	96.77	96.97	100	100	100	89.47
<b>VSCHOOLZ, Inc. -</b> VSCHOOLZ	60	60	60	60	60	60
<b>Zingy Learning -</b> Zingy Science Texas	-	-	-	52.63	52.63	52.63
<b>Zingy Learning -</b> Zingy Science Texas (Spanish)	-	-	-	60.53	60.53	60.53

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **K–5 science** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the following question.*

Check the product(s) used  
for grade K–5 science

**N/A -**

We do not use science materials for these grades

**Adaptive Curriculum**

-  
AC Science

82

**Delta Education LLC**

-  
FOSS Texas Edition, Spanish

FOSS Texas Edition	Check the product(s) used for grade K–5 science
<b>Delta Education LLC -</b> FOSS Texas Edition (Spanish)	<input type="checkbox"/>
<b>Discovery Education, Inc. -</b> Discovery Education Science Techbook	<input type="checkbox"/>
<b>Edumatics Corporation</b> -	<input type="checkbox"/>
<b>Edumatics Corporation -</b> Edusmart Science Texas (Spanish)	<input type="checkbox"/>
<b>Great Minds-</b> PhD Science TEKS Edition	<input type="checkbox"/>
<b>HMH -</b> Texas ScienceFusion	<input type="checkbox"/>
<b>HMH -</b> Texas ScienceFusion (Spanish)	<input type="checkbox"/>
<b>Knowing Science LLC -</b> Core Science Curriculum	<input type="checkbox"/>
<b>L.J. Create -</b> SciTEX Living With Science	<input type="checkbox"/>
<b>LAZEL, Inc. dba ExploreLearning</b> -	<input type="checkbox"/>
<b>Millmark Education Corporation, Inc.</b> -	<input type="checkbox"/>
<b>Savvas (formerly Pearson Education, Inc.)</b> -	<input checked="" type="checkbox"/>
<b>Savvas (formerly Pearson Education, Inc.)</b> -	<input checked="" type="checkbox"/>
<b>STEMscopes, Incorporated</b> -	<input checked="" type="checkbox"/>
<b>TPS Publishing Inc -</b> Creative Science Curriculum with STEM, Literacy and Arts Texas Edition	<input type="checkbox"/>
<b>VSCHOOLZ, Inc. -</b> VSCHOOLZ	<input type="checkbox"/>
<b>Zingy Learning -</b> Zingy Science Texas	<input type="checkbox"/>
<b>Zingy Learning -</b> Zingy Science Texas	<input type="checkbox"/>

Zingy Science Texas  
(Spanish)

Check the product(s) used  
for grade K–5 science

**Other**

(Enter as "Publisher - Title")

**Other**

(Enter as "Publisher - Title")

**Other**

(Enter as "Publisher - Title")

Does your district use the selected materials to cover 100% of the K–5 science TEKS?

- Yes**
- No, we use supplemental materials to cover the TEKS.

TEKS percentages have already been determined for the 6–8 science products listed in the table below, and these products have been pre-populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %		
	Grade 6	Grade 7	Grade 8
<b>Achieve3000, Inc -</b> eScience3000 Grade	100	100	100
<b>Adaptive Curriculum -</b> AC Science Grade	100	100	100
<b>CPO Science -</b> CPO Science Texas	100	100	100
<b>Discovery Education, Inc. -</b> Discovery Education Science Techbook	100	100	100
<b>Edumatics Corporation -</b> Edusmart Science Texas	100	100	100
<b>HMH -</b> Texas ScienceFusion Grade	100	100	100
<b>L.J. Create -</b> SciTEX	100	100	100
<b>LAB-AIDS Inc -</b> Science Texas Edition	100	100	100

<b>LAZEL, Inc. dba ExploreLearning -</b> ExploreLearning Science Gizmos	60.47	61.36	62.5
<b>McGraw-Hill Education -</b> Texas Glencoe iScience	100	100	100
<b>Millmark Education Corporation, Inc. -</b> CL Curriculum	88.37	88.37	88.37
<b>Savvas (formerly Pearson Education, Inc) -</b> Texas Interactive Science	100	100	100
<b>STEMscopes, Incorporated -</b> STEMscopes 2.0	100	100	100
<b>TPS Publishing Inc -</b> Creative Science Curriculum	88.37	75	92.5
<b>VSCHOOLZ, Inc. -</b> VSCHOOLZ	60	60	60
<b>Zingy Learning -</b> Zingy Science Texas 6-8	76.74	-	55

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **6–8 science** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the following question.*

Check the product(s) used for grade 6–8 science

**N/A -**

We do not use science materials for these grades

**Achieve3000, Inc**

-  
eScience3000

**Adaptive Curriculum**

-  
AC Science

**CPO Science -**

CPO Science Texas

**Discovery Education, Inc. -**

Discovery Education Science  
Techbook

**Edumatics Corporation**

-

Check the product(s) used for grade 6–8

science

**HMH -**

Texas ScienceFusion

**L.J. Create -**

SciTEX

**LAB-AIDS Inc -**

Science Texas Edition

**LAZEL, Inc. dba ExploreLearning**

ExploreLearning Science Gizmos

**McGraw-Hill Education**

Texas Glencoe iScience

**Millmark Education Corporation, Inc.**

CL Curriculum

**Savvas (formerly Pearson Education, Inc.)**

Texas Interactive Science

**STEMscopes, Incorporated -**

STEMscopes 2.0

**TPS Publishing Inc -**

Creative Science Curriculum with STEM, Literacy and Arts Texas Edition

**VSCHOOLZ, Inc. -**

VSCHOOLZ

**Zingy Learning -**

Zingy Science Texas

**Other**

(Enter as "Publisher - Title")



**Other**

(Enter as "Publisher - Title")



**Other**

(Enter as "Publisher - Title")



Does your district use the selected materials to cover 100% of the 6–8 Science TEKS?

**Yes**

No, we use supplemental materials to cover the TEKS.

TEKS percentages have already been determined for the 9–12 science products listed in the table below, and these products have been pre-

populated as options in the following question. If your district is using products not already listed, you will enter the publisher, title, and TEKS % in the "Other" field.

Publisher - Title	TEKS %			
	Biology	Chemistry	Integrated Physics and Chemistry	Physics
<b>Adaptive Curriculum -</b> AC Science Biology/Chemistry/IPC/Physics	100	100	100	100
<b>Bedford, Freeman and Worth Publishing Group -</b> Living by Chemistry	-	100	-	-
<b>Agile Mind Educational Holdings, Inc. -</b> Agile Mind Biology	94.83	-	-	-
<b>Discovery Education, Inc. -</b> Discovery Education Science Techbook	100	100	100	-
<b>Edumatics Corporation -</b> Edusmart Science Texas - Biology	100	-	-	-
<b>Ergopedia, Inc. -</b> Essential Physics	-	-	-	100
<b>HMH -</b> Texas Biology/Modern Chemistry/Physics	100	100	-	100
<b>L.J. Create -</b> SciTEX	100	100	100	100
<b>LAB-AIDS Inc -</b> Science and Global Issues - Biology Units	94.83	-	-	-
<b>LAB-AIDS Inc -</b> A Natural Approach to Chemistry	-	100	-	-
<b>LAZEL, Inc. dba ExploreLearning -</b> ExploreLearning Science Gizmos	62.07	57.38	80	64.71
<b>McGraw-Hill Education -</b> Texas Glencoe Biology/Texas Chemistry/IPC/Physics	100	100	100	100
<b>Perfection Learning -</b> Kinetic First-Person Physics	-	-	-	100
<b>Savvas (Pearson Education, Inc.) -</b> Pearson Biology/Chemistry, Texas Edition	100	100	-	-
<b>Sapling Systems, Inc. dba Sapling Learning -</b> Dynamic Biology/Chemistry/Physics... Texas Edition	100	100	-	100
<b>Scientific Minds, LLC -</b> Biology/Chemistry Science Starters	100	100	-	-
<b>STEMscopes, Incorporated -</b> STEMscopes 2.0, Biology/Chemistry/Physics	100	100	-	100
<b>VSCHOOLZ, Inc. -</b> VSCHOOLZ	100	65.57	-	-

Select which materials teachers in your district or charter will regularly use (once a week or more, on average) for **9–12 science** instruction next school year to ensure coverage of 100% of the TEKS.

*\*Note: You have the opportunity to provide information on supplemental materials in the following question.*

Check the product(s) used  
for grade 9–12 science

**N/A -**

We do not use science materials for these grades

**Adaptive Curriculum -**

AC Science  
Biology/Chemistry/IPC/Physics

**Bedford, Freeman and Worth Publishing Group**

-  
Living by Chemistry

**Agile Mind Educational Holdings, Inc.**

-  
Agile Mind Biology

**Discovery Education, Inc. -**

Discovery Education Science  
Techbook

**Edumatics Corporation -**

Edusmart Science Texas -  
Biology

**Ergopedia, Inc. -**

Essential  
Physics

**HMH -**

Texas Biology/Modern  
Chemistry/Physics

**L.J. Create -**

SciTEX

**LAB-AIDS Inc -**

Science and Global Issues, Biology  
Units

**LAB-AIDS Inc -**

A Natural Approach to  
Chemistry

**LAZEL, Inc. dba ExploreLearning**

-  
ExploreLearning Science Gizmos

**McGraw-Hill Education -**

Texas Glencoe Biology/Texas  
Chemistry/IPC/Physics

**Perfection Learning**

Perfection Learning -  
Kinetic First-Person  
Physics

Check the product(s) used  
for grade 9–12 science

**Savvas (Pearson Education, Inc.) -**  
Pearson/Savvas Biology/Chemistry, Texas  
Edition

**Sapling Systems, Inc. dba Sapling Learning -**  
Dynamic Biology/Chemistry/Physics Texas  
Edition

**Scientific Minds, LLC -**  
Biology/Chemistry Science Starters

**STEMscopes, Incorporated -**  
STEMscopes 2.0,  
Biology/Chemistry/Physics

**VSCHOOLZ, Inc. -**  
VSCHOOLZ

**Other**  
(Enter as "Publisher - Title")

Texas Parks and Wildlife

**Other**  
(Enter as "Publisher - Title")

**Other**  
(Enter as "Publisher - Title")

Does your district use the selected materials to cover 100% of the 9–12 science TEKS?

- Yes**
- No, we use supplemental materials to cover the TEKS.

## Supplemental Science Products

Select which additional and/or supplemental instructional materials (beyond core, Tier 1 curricular materials) that teachers in your district or charter will likely regularly use (once a week or more on average) for each grade band of **K–12 science** instruction next school year.

	Grade K–5	Grade 6–8	Grade 9–12
<b>N/A -</b> We do not use supplemental science materials for these grades	<input type="checkbox"/> 89	<input type="checkbox"/>	<input type="checkbox"/>
<b>Locally Developed Materials</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Teacher-created</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Teacher-created materials	Grade K–5	Grade 6–8	Grade 9–12
Teachers Pay Teachers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TEKS Resource System (TRS)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
BrainPop!	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IXL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kahoot!	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ThinkUp	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SciTEX Learning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
YouTube	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other</b> (Enter as "Publisher - Title")	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Edumatics Corporation-Edusmart			
<b>Other</b> (Enter as "Publisher - Title")	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LJ Create			
<b>Other</b> (Enter as "Publisher - Title")	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Summit K12			
<b>Other</b> (Enter as "Publisher - Title")	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scientific Minds			
<b>Other</b> (Enter as "Publisher - Title")	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Explore Learning Science Gizmos			

Indicate the level of the importance your district places on each of the following characteristics when selecting instructional materials to use in your **science** classrooms.

	No Importance	Low Importance	Moderately Important	Very Important
100% TEKS/TPG coverage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Includes built-in supports for all learners	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Includes research-based strategies for content and instruction	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Includes progress monitoring tools	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Program cost	<input type="radio"/> <sup>90</sup>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Access to professional development and implementation supports	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Would you request all science products listed previously and/or other products used by Texas educators be reviewed for quality?

**Request that all science materials listed above receive quality reviews**

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

Request that a specific product receive a review:

Enter the product below as "Publisher - Title"

What resources and/or PD would you like for TEA to provide to LEAs? What changes would you like to see to improve existing resources?

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Dr. Jose A. Gonzalez, Superintendent

Sam Saldivar Jr., Board President

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

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



**92** \_\_\_\_\_  
**Superintendent of Schools**



# Waivers

**2021-2022 Application for Staff Development Minutes Waiver**

**Waiver ID: 66956**

**Application Information**

<b>Category:</b> Expedited	<b>Creator:</b> Roberto Garcia, District Editor	<b>Status:</b> Draft
<b>Creation Date:</b> 4/22/2022	<b>Approving Superintendent:</b>	<b>Assigned To:</b> Roberto Garcia

**LEA Contact**

**Full Name:** Roberto Garcia  
**Phone:** (956) 657-2843  
**Email:** Roberto.Garcia@mcAllenISD.net

**LEA Information**

**LEA:** MCALLEN ISD (108906)  
**Address:** 2000 N 23RD ST, MCALLEN, TX 78501-2000  
**Phone:** (956) 618-6000

**Date of LEA Board of Trustees Approval**

**Date:**

**Information**

Pursuant to Texas Education Code (TEC) §25.081 this waiver allows the district or charter school to train staff on various educational strategies designed to improve student performance in lieu of a maximum of:

- 2,100 minutes of student instruction for districts and charter schools that provide operational and instructional minutes; or
- 5 days of student instruction for charter schools that provide 180 days of operation

**Requested Years**

2022-2023


**LEA Attachments (0)**

There are no LEA attachments.

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

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



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



Vendor Names		D&F Industires, Inc.
<b>Rank</b>		<b>1</b>
	Maximum points	<b>100.00</b>
<b>Price</b>		<b>90.50</b>
Base Bid (Includes Contingency) (LI1 and LI2)		\$6,040,000.00
<b>Offeror's experience and reputation</b>	<b>22</b>	<b>17.5</b>
Three (3) Supplier Reference Letters (LI14)	1.5	1.5
Claims, judgments, arbitration proceedings or suits (LI8)	1	1
Three (3) K-12 projects/ref check (LI4)	15	15
(Reference Checks)		
Three (3) Non K-12 projects/ref. check (LI5)	4.5	0
(Reference Checks)		0 out of 3
<b>Quality of the offeror's goods or services</b>	<b>3</b>	<b>2</b>
Repeat business for similar scope/size (LI6)	2	2
MISD projects (LI3)	1	0
		0 out of 3
<b>The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (A32)</b>	<b>1</b>	<b>1</b>
<b>Offeror's safety record</b>	<b>7</b>	<b>7</b>
"OSHA Form 300 Log (LI15)	1.5	1.5
Safety program manual and/or procedures. (LI16)	2	2
Drug/alcohol prevention policy and/or procedures. (LI17)	1	1
"Workers Compensation Experience Rating" (LI14)	1.5	1.5
Frequency of safety inspections (LI7)	1	1
<b>Offeror's Proposed Personnel</b>	<b>8</b>	<b>8</b>
Staff experience (industry) (LI10)	4	4
Staff experience (firm) (LI10)	4	4
<b>Whether the offeror's financial capability is appropriate to the size and scope of the project</b>	<b>2</b>	
Financial Statement (LI20)	1	0
		not provided
Surety Letter (LI21)	1	1
<b>Any other relevant factors specifically listed in the CSP</b>	<b>2</b>	
On-time project completion (LI 3-5)	1	1
Projects currently in progress (LI11)	1	1

# AIA<sup>®</sup> Document A101<sup>™</sup> – 2017

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

**AGREEMENT** made as of the  day of  in the year 202<sub>\_\_</sub>  
*(In words, indicate day, month and year.)*

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

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

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

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

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

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

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

**ELECTRONIC COPYING** of any portion of this AIA<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.

## TABLE OF ARTICLES

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

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

## INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

**§ 3.3 Substantial Completion**

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

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

By the following date:

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

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

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

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

**ARTICLE 4 CONTRACT SUM**

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

**§ 4.2 Alternates**

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

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

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

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

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

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

§ 4.4 Unit prices, if any:

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

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

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

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

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

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

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

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

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

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

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

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

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

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

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

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

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

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

### **§ 5.1.7 Retainage**

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

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

*(Paragraphs deleted)*

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

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

None.

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

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

Retainage on any incomplete Work and Unsettled claims.

*(Paragraph deleted)*

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

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

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

## **§ 5.2 Final Payment**

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;
- .3 the Contractor has provided the following documents:
  - .1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;
  - .2 Final list of subcontractors (AIA Document G705);
  - .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at: [www.tea.state.tx.us/school.finance/facilities/cert\\_2004.pdf](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 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the

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

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

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

§ 5.3 Interest

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

■ %

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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



§ 6.2 Binding Dispute Resolution

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

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

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

(Paragraphs deleted)

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

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

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

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



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

**§ 8.5 Insurance and Bonds**

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

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

*(Paragraphs deleted)*

**§ 8.7** Other provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

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

*(Paragraphs deleted)*

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

(Paragraph deleted)

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

Number	Title	Date

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

Section	Title	Date	Pages

.5 Addenda, if any:

Number	Date	Pages

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

.6 The following Exhibits, which are attached hereto:

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

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

**OWNER:**

**CONTRACTOR:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

[ ]

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

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

Printer Name:

Title:

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

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

Stephen L. Crain

EXHIBIT A

to

*(Paragraph deleted)*

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

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



EXHIBIT B

to

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

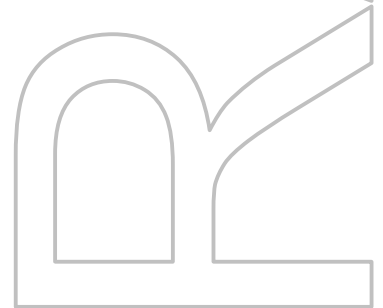
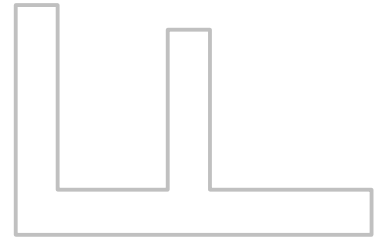
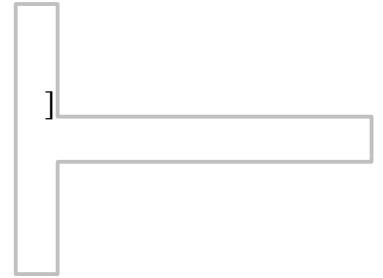


EXHIBIT C

to

*(Table deleted)*

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

Payment Bond

and

Performance Bond



(Table deleted)

EXHIBIT D

to

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

Contractor's Insurance Certificates

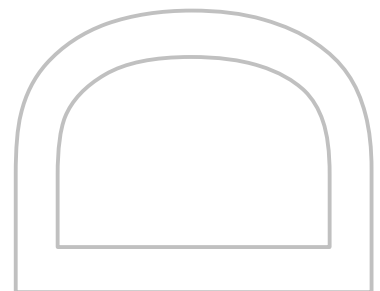
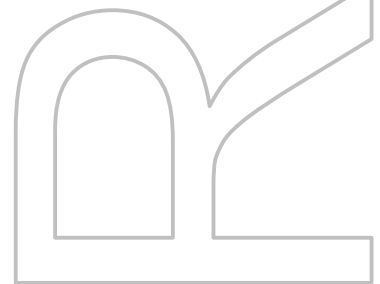
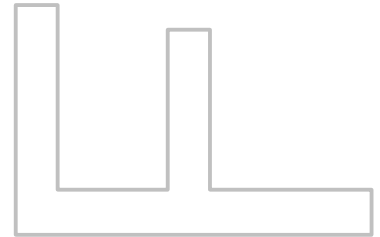
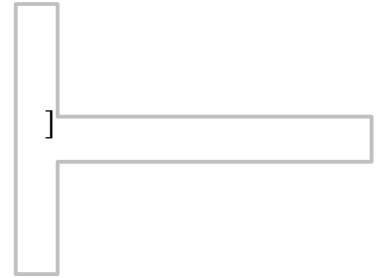


EXHIBIT E

to

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

Plans and/or Specifications

*(Table deleted)*



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

### THE OWNER:

(Name, legal status and address)

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

### THE ARCHITECT:

(Name, legal status and address)

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### ADDITIONS AND DELETIONS:

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

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

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

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

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

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.3 THE WORK

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

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

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

### § 1.1.7 INSTRUMENTS OF SERVICE

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

### § 1.1.8 INITIAL DECISION MAKER

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

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

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

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

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

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

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

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

### § 2.1.2 DELETED.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

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

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

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

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

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

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

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

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

**§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

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

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

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

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

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

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

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

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

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **§ 3.4 LABOR AND MATERIALS**

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

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

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

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

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

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

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

### **§ 3.5 WARRANTY**

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

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

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

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

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

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

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

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

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

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

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

### **§ 3.6 TAXES**

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

### **§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

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

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

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

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

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

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

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

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

### **§ 3.8 ALLOWANCES**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

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

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

### **§ 3.9 SUPERINTENDENT**

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

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

**§ 3.9.3 DELETED.**

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

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

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

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

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

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

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

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

### **§ 3.13 USE OF SITE**

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

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

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

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

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

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

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

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

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

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### § 3.18 INDEMNIFICATION

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

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

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

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

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

### § 3.20 RECORD DRAWINGS

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

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

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

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

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

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

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

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

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

### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

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

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

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

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

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

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

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

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

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

§ 4.2.13 DELETED.

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

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

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

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

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

### § 5.3 SUBCONTRACTUAL RELATIONS

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

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

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

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

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

### **§ 6.2 MUTUAL RESPONSIBILITY**

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

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

**§ 6.2.3 DELETED.**

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

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

**§ 6.3 OWNER'S RIGHT TO CLEAN UP**

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

**ARTICLE 7 CHANGES IN THE WORK**

**§ 7.1 GENERAL**

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

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

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

**§ 7.2 CHANGE ORDERS**

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

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

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

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

**§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **§ 7.4 MINOR CHANGES IN THE WORK**

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

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

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

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

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

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

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

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

#### **§ 8.2 PROGRESS AND COMPLETION**

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

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

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

#### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

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

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

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

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

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

### **§ 9.2 SCHEDULE OF VALUES**

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

### **§ 9.3 APPLICATIONS FOR PAYMENT**

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

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

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

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

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

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

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

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

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

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

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

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

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

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

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

#### **§ 9.6 PROGRESS PAYMENTS**

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

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

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

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

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

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

**§ 9.6.7** DELETED.

### **§ 9.7 FAILURE OF PAYMENT**

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

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

### **§ 9.8 SUBSTANTIAL COMPLETION**

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

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

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

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

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

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

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

### **§ 9.9 PARTIAL OCCUPANCY OR USE**

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

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

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

## § 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

#### **§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

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

#### **§ 10.3 HAZARDOUS MATERIALS**

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

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

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

**§ 10.3.3 DELETED.**

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

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

**§ 10.3.6 DELETED.**

**§ 10.4 EMERGENCIES**

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

**ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

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

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

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

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

**§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES**

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

<b>Coverage</b>	<b>Minimum Amounts and Limits</b>
<b>Worker's Compensation</b>	
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
<b>Commercial General Liability</b>	
Bodily Injury/Property Damage	\$1,000,000.00 per occurrence \$2,000,000.00 aggregate

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

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

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

**§11.1.5.2** All policies shall contain special endorsements to include:

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

.6 the following coverage:

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

#### §11.1.5.6 Umbrella Excess Liability Insurance

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

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

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

#### §11.1.8 Workers' Compensation Insurance Coverage.

##### §11.1.8.1 Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

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

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

## **§ 11.3 PROPERTY INSURANCE**

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

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

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

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

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

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

**§ 11.3.1.2 DELETED.**

**§ 11.3.1.3 DELETED.**

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

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

**§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.**

**§ 11.3.3 LOSS OF USE INSURANCE DELETED.**

**§ 11.3.4 DELETED.**

**§ 11.3.5 DELETED.**

**§ 11.3.6 DELETED.**

### **§ 11.3.7 WAIVERS OF SUBROGATION**

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

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

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

**§ 11.3.9** DELETED.

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

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

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

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

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

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

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

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

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

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

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

## **§ 12.2 CORRECTION OF WORK**

### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

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

### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

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

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

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

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

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

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

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

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

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

### § 13.2 SUCCESSORS AND ASSIGNS

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

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

### § 13.3 WRITTEN NOTICE

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

### § 13.4 RIGHTS AND REMEDIES

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

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

### § 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

### **§ 13.6 INTEREST**

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

### **§ 13.7 TIME LIMITS ON CLAIMS**

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

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

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

### **§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT**

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

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

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

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

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

*(Paragraphs deleted)*  
stopped.

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

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

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

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

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

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

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

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

### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

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

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

### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

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

#### § 15.1.2 NOTICE OF CLAIMS

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

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

*(Paragraph deleted)*

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

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

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

## § 15.2 INITIAL DECISION

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

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

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

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

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

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

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

§ 15.2.8 DELETED.

## § 15.3 MEDIATION

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

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

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

**§ 15.4 ARBITRATION**

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

**OWNER:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

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

\_\_\_\_\_  
Date

**CONTRACTOR:**

[ \_\_\_\_\_ ]

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

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

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

\_\_\_\_\_  
Date

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain


*(Paragraphs deleted)*



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

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



**163** \_\_\_\_\_  
**Superintendent of Schools**



# AIA® Document A101® – 2017

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

**AGREEMENT** made as of the 4<sup>th</sup> day of May in the year 2022  
*(In words, indicate day, month and year.)*

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

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

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

HELLAS CONSTRUCTION, INC., a Texas for-profit corporation  
12000 West Parmer Lane  
Austin, Texas 78613

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

RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner Contract No. 2022-189)

McAllen High School  
2021 N. La Vista Avenue  
McAllen, Texas 78501

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

Javier Hinojosa, a sole proprietor doing business as Javier Hinojosa Engineering  
416 E. Dove Avenue  
McAllen, Texas 78504

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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

Init.

## TABLE OF ARTICLES

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

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

### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

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

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

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

Init.

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User Notes:

(1347047784)

**§ 3.3 Substantial Completion**

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

[ X ] Not later than one hundred twenty-five ( 125 ) calendar days from the date of commencement of the Work.

[ ] By the following date:

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

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

Portion of Work	Substantial Completion Date
N/A	

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

**ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be One Million Nine Hundred Fifty-Eight Thousand Five Hundred Dollars and Zero Cents ( \$ 1,958,500.00 ), subject to additions and deductions as provided in the Contract Documents. The Contract Sum consists of two portions, the budgeted amount of One Million Eight Hundred Seventy-Eight Thousand Five Hundred Dollars and Zero Cents ( \$1,878,500.00 ) and a contingency of Eighty Thousand Dollars and Zero Cents ( \$80,000.00 ) as specified in Section 4.3 below. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Contractor acknowledges and agrees that the contingency portion of the Contract Sum set forth in Section 4.3 shall not be due or payable unless and to the extent that Owner authorizes such expenditure in writing. If the Owner’s Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

**§ 4.2 Alternates**

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

Item*	Price
n/a	

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

Item	Price	Conditions for Acceptance
------	-------	---------------------------

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

Init.

Item	Price
Owner's Contingency	\$80,000.00

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

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

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

**§ 4.5.1 Substantial Completion.** Owner and Contractor recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in Article 3, plus any extension thereof in accordance with Article 8 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner One Thousand Five Hundred Dollars and Zero Cents (\$1,500.00) per calendar day for each day after the Substantial Completion date noted in Article 3 until the Work is substantially complete.

**§ 4.5.2 Final Completion.** In addition, timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Work within 30 calendar days of the Substantial Completion date (subject to adjustment of such date in accordance with the terms hereof). It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor and Owner also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner Five Hundred Dollars and Zero Cents (\$500.00) per calendar day for each day after the Final Completion date noted in Article 3 until the Work is substantially complete.

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

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

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

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the fifth day following approval by the Board of Trustees or as otherwise required by applicable law .

*(Federal, state or local laws may require payment within a certain period of time.)*

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

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

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

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

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

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

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

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Init.

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

*(Paragraphs deleted)*

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

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

None.

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

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

Retainage on any incomplete Work and Unsettled claims.

*(Paragraph deleted)*

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

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

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

## § 5.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;
- .3 the Contractor has provided the following documents:
  - .1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;
  - .2 Final list of subcontractors (AIA Document G705);
  - .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at: [www.tea.state.tx.us/school.finance/facilities/cert\\_2004.pdf](http://www.tea.state.tx.us/school.finance/facilities/cert_2004.pdf);
  - .4 Contractor's warranties, organized as required elsewhere in the Contract Documents;

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- .5 Maintenance and Instruction Manuals;
- .6 Owner's Final Completion Certificate; and
- .7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepi, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes;
- .4 a final Certificate for Payment has been issued by the Architect; and
- .5 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

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

**§ 5.3 Interest**

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

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

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

**§ 6.2 Binding Dispute Resolution**

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

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

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

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

*(Paragraphs deleted)*

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

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

§ 8.1 All references to AIA Document A201-2017, AIA Document A201-2007, AIA Document A201 or the A201, shall mean to the modified A201-2007 attached hereto as Exhibit "A". Similarly, references to AIA Document A101-2017, AIA Document A101-2007 or to the A101 shall mean to this A101-2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

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

Mr. Ruben Trevino  
McAllen Independent School District  
4309 Warrior Drive, Bldg. B  
McAllen, TX 78501

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

Mr. Saulo Hernandez  
Hellas Construction, Inc.  
12000 West Parmer Lane  
Austin, Texas 78613  
Phone: (512) 250-2910  
Email: \_\_\_\_\_

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

### **§ 8.5 Insurance and Bonds**

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

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

*(Paragraphs deleted)*

§ 8.7 Other provisions:

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

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

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

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Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Contract.

§ 8.7.4 Contractor acknowledges that the Owner retained the party, if any, set forth above under "Architect" above to provide certain design, contract administration and/or other services for the Project, and may not have used an AIA document for the contract with such party. All references in the Contract Documents to the Architect shall be to the entity named on the first page as the "Architect". The parties acknowledge and agree that, notwithstanding any other provision in the Contract Documents, the Owner is not obligated to retain an architect for the Project and the Owner makes no representations about the party, if any, set forth above under "Architect" being an architect. In the event Owner did not designate a party above under "Architect, then Contractor acknowledges and agrees that Owner, through one or more employees who need not be architects, will be acting as the "Architect" as such term is used in this Agreement.

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

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

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

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

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

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

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

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

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

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

§ 8.7.15 Contractor 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.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

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

*(Paragraphs deleted)*

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

*(Paragraph deleted)*

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

Number	Title	Date
--------	-------	------

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

Section	Title	Date	Pages
---------	-------	------	-------

- .5 Addenda, if any (attached as part of Exhibit "E"):

Number	Date	Pages
--------	------	-------

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

- .6 The following Exhibits, which are attached hereto:

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

*(Paragraph deleted)*

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

**OWNER:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

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

**CONTRACTOR:**

**HELLAS CONSTRUCTION, INC.**

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

Printed Name: Anis Infante

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

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain

EXHIBIT A

to

Agreement dated May 4, 2022 between

*(Table deleted)*

McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner  
Contract No. 2022-189))

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

(Table deleted)

## EXHIBIT B

to

Agreement dated May 4, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner  
Contract No. 2022-189))

Contractor's Proposal

Init.

/

EXHIBIT C

to

Agreement dated May 4, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner  
Contract No. 2022-189))

Payment Bond

and

Performance Bond

Init.

/

EXHIBIT D

to

Agreement dated May 4, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner  
Contract No. 2022-189))

Contractor's Insurance Certificates

Init.

/

EXHIBIT E

to

Agreement dated May 4, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner  
Contract No. 2022-189))

Plans and/or Specifications

*(Table deleted)*

# **Additions and Deletions Report for** **AIA® Document A101® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 19:39:46 ET on 05/04/2022.

## **PAGE 1**

**AGREEMENT** made as of the 4<sup>th</sup> day of May in the year 2022

...

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

...

HELLAS CONSTRUCTION, INC., a Texas for-profit corporation  
12000 West Parmer Lane  
Austin, Texas 78613

...

RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner Contract No. 2022-189)

...

McAllen High School  
2021 N. La Vista Avenue  
McAllen, Texas 78501

...

Javier Hinojosa, a sole proprietor doing business as Javier Hinojosa Engineering  
416 E. Dove Avenue  
McAllen, Texas 78504

## **PAGE 2**

**EXHIBIT A ~~INSURANCE AND BONDS~~MODIFIED AIA DOCUMENT A201–2007, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

**EXHIBIT B CONTRACTOR'S PROPOSAL**

**EXHIBIT C PAYMENT AND PERFORMANCE BONDS**

**EXHIBIT D CONTRACTOR'S INSURANCE CERTIFICATES**

**EXHIBIT E PLANS AND SPECIFICATIONS**

...



**§ 4.5.1 Substantial Completion.** Owner and Contractor recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in Article 3, plus any extension thereof in accordance with Article 8 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner One Thousand Five Hundred Dollars and Zero Cents (\$1,500.00) per calendar day for each day after the Substantial Completion date noted in Article 3 until the Work is substantially complete.

**§ 4.5.2 Final Completion.** In addition, timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Work within 30 calendar days of the Substantial Completion date (subject to adjustment of such date in accordance with the terms hereof). It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor and Owner also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner Five Hundred Dollars and Zero Cents (\$500.00) per calendar day for each day after the Final Completion date noted in Article 3 until the Work is substantially complete.

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

...

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

PAGE 5

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment, fifth day following approval by the Board of Trustees or as otherwise required by applicable law .

...

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

...

~~§ 5.1.6~~ In accordance with AIA Document A201™ 2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

.1 That portion of the Contract Sum properly allocable to completed ~~Work;~~ Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;

...

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably ~~justified;~~ justified to the extent approved by the Owner in writing, as provided in Section 7.3.9 of AIA Document A201.

...

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document ~~A201-2017;~~ A201;

...

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document ~~A201-2017;~~ A201 or amounts certified by the Architect and disputed by the Owner; and

...

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner ~~may~~ shall withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

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

**§ 5.1.7.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

**PAGE 6**

None.

...

Retainage on any incomplete Work and Unsettled claims.

~~§ 5.1.8~~ If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

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

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

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

...

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201-2017, A201, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;
- .3 the Contractor has provided the following documents:
  - .1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;
  - .2 Final list of subcontractors (AIA Document G705);
  - .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at: [www.tea.state.tx.us/school.finance/facilities/cert\\_2004.pdf](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 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes;
- .4 a final Certificate for Payment has been issued by the ~~Architect~~.Architect; and
- .5 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, ~~or as follows:~~

and upon acceptance by the Owner and Architect, and after satisfactory evidence has been given by the Contractor that all of the Contractor's bills have been paid and the entire Project is free from liens.

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Payments due and unpaid under the Contract shall bear interest ~~from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ pursuant to Texas Government Code §2251.025.

...

%

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document ~~A201-2017, A201,~~ unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

...

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document ~~A201-2017, A201,~~ the method of binding dispute resolution shall be as follows:

...

Litigation in a court of competent jurisdiction

...

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document ~~A201-2017, A201.~~

§ 7.1.1 ~~If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows: (Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)~~

**PAGE 8**

§ 8.1 All references to AIA Document ~~A201-2017, AIA Document A201-2007, AIA Document A201 or the A201,~~ shall mean to the modified ~~A201-2007~~ attached hereto as Exhibit "A". Similarly, references to AIA Document ~~A101-2017, AIA Document A101-2007 or to the A101~~ shall mean to this ~~A101-2017~~. Where reference is made in this Agreement to a provision of AIA Document ~~A201-2017 or another Contract Document,~~ the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

...

Mr. Ruben Trevino  
McAllen Independent School District  
4309 Warrior Drive, Bldg. B  
McAllen, TX 78501

...

Mr. Saulo Hernandez  
Hellas Construction, Inc.  
12000 West Parmer Lane  
Austin, Texas 78613

Phone: (512) 250-2910

Email: \_\_\_\_\_

...

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents. Article II of the AIA Document A201. The Contractor's insurance certificates are attached hereto as Exhibit "D".

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents. A201. The original bonds required pursuant to Section 11.4 of the A201 and this Section 8.5 are attached to the Owner's execution original of this Agreement as Exhibit "C" with a copy of the bonds attached as Exhibit "C" to the Contractor's execution original.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format 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.)*

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

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

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

§ 8.7.4 Contractor acknowledges that the Owner retained the party, if any, set forth above under "Architect" above to provide certain design, contract administration and/or other services for the Project, and may not have used an AIA document for the contract with such party. All references in the Contract Documents to the Architect shall be to the entity named on the first page as the "Architect". The parties acknowledge and agree that, notwithstanding any other provision in the Contract Documents, the Owner is not obligated to retain an architect for the Project and the Owner makes no representations about the party, if any, set forth above under "Architect" being an architect. In the event Owner did not designate a party above under "Architect", then Contractor acknowledges and agrees that Owner, through one or more employees who need not be architects, will be acting as the "Architect" as such term is used in this Agreement.

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

§ 8.7.6 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places

designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

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

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

§ 8.7.9 This Agreement is subject to all applicable federal and state laws, rules, and regulations. 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.

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

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

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

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

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

§ 8.7.15 Contractor 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.

**PAGE 10**

- .1 This executed AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, A201™–2007, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203–2013 incorporated into this Agreement.)(as modified and attached hereto as Exhibit "A")

~~.5~~ Drawings, 3 Drawings attached hereto as part of Exhibit "E"

...

~~.6~~ Specifications, 4 Specifications attached hereto as part of Exhibit "E".

...

~~.7~~ Addenda, if any; 5 Addenda, if any (attached as part of Exhibit "E"):

...

...

~~.8~~ Other Exhibits; 6 The following Exhibits, which are attached hereto:

.1 Exhibit A The modified AIA Document A201-2007, General Conditions of the Contract for Construction.

.2 Exhibit B Contractor's Proposal

.3 Exhibit C Payment and Performance Bonds

.4 Exhibit D Contractor's Insurance Certificates

(Check all boxes that apply and include appropriate information identifying the exhibit where required.) .5 Exhibit E Plans and Specifications

[ ] — AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.) This Agreement entered into as of the day and year first written above.

**OWNER:**

**CONTRACTOR:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

**HELLAS CONSTRUCTION, INC.**

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

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

Printed Name: Anis Infante

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

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain

EXHIBIT A

to  
[ ] ~~The Sustainability Plan:~~  
Agreement dated May 4, 2022 between

**Title** **Date** **Pages**

McAllen Independent School District and Hellas Construction, Inc.  
[ ] ~~Supplementary and other Conditions of the Contract:~~ (RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner Contract No. 2022-189))

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

Document

Title

Date

Pages

EXHIBIT B

~~9~~ Other documents, if any, listed below:

~~(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™ 2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)to~~

Agreement dated May 4, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner  
Contract No. 2022-189))

Contractor's Proposal

EXHIBIT C

to

Agreement dated May 4, 2022 between

McAllen Independent School District and Hellas Construction, Inc.

(RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner Contract No. 2022-189))

Payment Bond

and

Performance Bond

EXHIBIT D

to

Agreement dated May 4, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner  
Contract No. 2022-189))

Contractor's Insurance Certificates

EXHIBIT E

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

Agreement dated May 4, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1052 McAllen High School Synthetic Football Field and Track and Field Improvements (Owner  
Contract No. 2022-189))

Plans and/or Specifications

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

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

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

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

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 19:39:46 ET on 05/04/2022 under Order No. 3104236153 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

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



**196** \_\_\_\_\_  
**Superintendent of Schools**

**MCALLEN INDEPENDENT SCHOOL DISTRICT  
CONTRACT NO. 2022-190 American Fence through Request for Proposal No. 2022-1024**

This contract ("Contract"), made and entered into effective by and between **McALLEN INDEPENDENT SCHOOL DISTRICT** (hereinafter referred to as "District") and **American Fence**, a Texas general partnership composed of Cesar Cantu and Tomas Gonzalez both residents of Hidalgo County, Texas, (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 **Facilities, Maintenance and Operations** Department of District (the "Department") requires certain services ("Services") rendered by Contractor who has the training, experience, and qualifications necessary to provide the services;

**WHEREAS**, District requested proposals from vendors for Services, more particularly described on Exhibit A attached hereto;

**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 record keeping, 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. 2022-1024
- C. Exhibit "B" – Vendor's Services, Products and Fees Pursuant to Request for Proposal No. 2022-1024
- D. Exhibit "C" – Certificate of Insurance
- E. Exhibit "D" – Payment Bonds

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 as provided for in this Agreement, inclusive of Exhibits.

## 2. INSURANCE COVERAGE

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

- A. Statutory Workers' Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - \$500,000
- B. Commercial General Insurance (occurrence basis only) \$1,000,000 each claim and in the aggregate.
- C. Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person \$100,000; each accident \$300,000; and for property damage, each occurrence of \$100,000. No

deletions/exclusions from standard coverage form allowed without written consent of District. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

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

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

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

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

### **4. ADJUDICATION**

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

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

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

### **6. PAYMENT**

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

## 7. TAXES AND BENEFITS

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

## 8. INCURRING FINANCIAL OBLIGATION

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

## 9. ACCESS TO BOOKS AND RECORDS

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

## 10. NON-DISCRIMINATION

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

## 11. HOLD HARMLESS

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

## 12. TERM AND TERMINATION OF CONTRACT

**Term.** The term of this Contract shall commence on the Commencement Date and remain effective through May 31, 2022. 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 hereunder.

### 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: American Fence  
Attn: Thomas Gonzalez  
1501 Forest St  
San Juan, TX 78589

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 PRONOUNS**

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

## **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 appropriation was made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment hereinafter 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 (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any, (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

#### **28. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES (SB 13)**

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

#### **29. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES (SB 19)**

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. This verification is not

required for an agreement with a sole-source provider; or a governmental entity that does not receive bids from a company that is able to provide this verification.

**30. 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 sanction's 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.

**31. SUSPENSION AND DEBARMENT COMPLIANCE REQUIREMENTS**

Contractor shall comply with all requirements of [Section 3.2 – Compliance Requirements](#).

**32. 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.

**33. 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.

**34. 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.

**35. 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: \_\_\_\_\_  
Sam Saldivar, Board of Trustees

**VENDOR:**

American Fence

By: \_\_\_\_\_  
Cesar Cantu, Partner

By: \_\_\_\_\_  
Tomas Gonzalez, Partner

Approved as to form:

Atlas Hall & Rodriguez, LLP

by: \_\_\_\_\_  
Stephen L. Crain

**DRAFT**

**Exhibit "A" – District's Request for Proposal No. 2022-1024**

**DRAFT**



**2022-1024**

**Fencing Materials and Services**

Issue Date: 12/22/2021

Questions Deadline: 1/7/2022 03:00 AM (CT)

Response Deadline: 1/12/2022 03:00 PM (CT)

**Contact Information**

Contact: Graciela Garza Senior Buyer

Address: Purchasing Services

Administration Office

2000 N 23rd St

McAllen, TX 78501-6126

Phone: (956) 6574487

Fax: (956) 6574481

Email: [ggarza@mcallenisd.net](mailto:ggarza@mcallenisd.net)

## Event Information

Number: 2022-1024  
Title: Fencing Materials and Services  
Type: Request for Proposal  
Issue Date: 12/22/2021  
Question Deadline: 1/7/2022 10:00 AM (CT)  
Response Deadline: 1/12/2022 03:00 PM (CT)  
Notes: McAllen Independent School District (the "District") invites your submittal on the above referenced project.

Submittals shall be received via one of the following:

- electronic submittals through the District's Bidding Portal, <https://mcallenisd.ionwave.net/Login.aspx> ;
- mail\*; or
- hand-delivered\*.

Submittals received after this deadline will be void and unacceptable. Facsimile transmittals and/or emailed submittals will not be accepted.

Any questions regarding this solicitation must be submitted through the "Questions" option located on the Ionwave website no later than the date and time specified on the solicitation. Questions/clarifications regarding this solicitation will not be answered by phone nor email.

## Ship To Information

Contact: Ruben Trevino, Executive Director  
Address: Facilities, Maintenance & Operations  
Building A  
4309 Warrior Drive  
McAllen, TX 78501  
Phone: (956) 6323200  
Email: [ruben.trevino@mcallenisd.net](mailto:ruben.trevino@mcallenisd.net)

## Billing Information

Contact: Iris Luna, Director  
Address: Accounting  
2000 N. 23rd Street  
McAllen, TX 78501  
Phone: (956) 6328403  
Email: [iris.luna@mcallenisd.net](mailto:iris.luna@mcallenisd.net)

## Bid Attachments

### General Terms and Conditions RFP.pdf

General Terms and Conditions RFP

[View Online](#)

### 2022-1024 Specificaitons and Scope of work.pdf

Specificaitons and Scope of work

[View Online](#)

### IRS FORM W-9 Revised Oct 2018 (Fillable Form).pdf

W-9 Form

[View Online](#)

### CIQ FORM FILLABLE R1.1.2021.pdf

Conflict of Interest Questionnaire (CIQ) form

[View Online](#)

## Requested Attachments

### Completed Conflict of Interest Questionnaire (CIQ)

*(Attachment required)*

Upload your completed CIQ.

If no conflict, indicate "N/A" (Not applicable) on the form.

### Completed Form 1295 or Exemption Statement

*(Attachment required)*

Form must be completed online: [http://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

If not applicable to your company, please attach a statement indicating the reason.

### Completed W-9 Form

*(Attachment required)*

Upload your completed W-9 form.

### Proof of Insurance (Acord Certificate of Insurance Form)

*(Attachment required)*

Upload your certificate of insurance in Acord form.

### Assumed Name Certificate

Upload your Assumed Name Certificate

## Bid Attributes

### 1 General Terms and Conditions

Please download and read the General Terms and Conditions for this solicitation. Acknowledge you have read, understand and accept the general terms and conditions.

\*\*This is your electronic signature.

I have read, understand and accept

*(Required: Check if applicable)*

### 2 Specifications and Scope of Work

Please download and read the Specifications and Scope of Work for this solicitation. Acknowledge you have read, understand and accept the specifications and scope of work.

\*\*This is your electronic signature.

I hereby acknowledge.

*(Required: Check if applicable)*

### 3 Deviation/Compliance

I certify that there are NO deviations or exceptions from the attached specific terms, conditions, and specifications.

\*\*This is your electronic signature.

Agree - NO DEVIATIONS.  Do Not Agree - Please see below.

*(Required: Check only one)*

**4 Deviations and Exceptions**

If your company intends to deviate from the Specifications listed in the attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The District may consider any deviations or exceptions in its bid award decisions. The District reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, please enter N/A (Not Applicable).

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*(Required: Maximum 4000 characters allowed)*

**5 Conflict of Interest Questionnaire (CIQ)**

All Bidders doing business with the District must provide a Conflict of Interest Questionnaire Form as required by Texas Local Gov't Code 176.006. Failure to submit may result in disqualification of bid submission.

Does this vendor have conflict of interest with McAllen Independent School District?

Yes  No

*(Required: Check only one)*

**6 Felony Conviction Notification**

Texas Education Agency Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states, "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." This notice is not required of a publicly held corporation.

Select where applicable:

- A. My company is a publicly held corporation; therefore, this reporting requirement is not applicable.
- B. My company is not owned nor operated by anyone who has been convicted of a felony.
- C. My company is owned and operated by an individual who has/have been convicted of a felony.

\*\*This is your electronic signature.

- A. My company is a publicly held corporation.  B. My company is not owned nor operated by a felon
- C. My company is owned and operated by a felon.

*(Required: Check only one)*

**7 Felony Conviction Details**

If your firm is owned or operated by anyone who has been convicted of a felony, please list their names and the details of the conviction(s). If not applicable, please enter N/A (not applicable).

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*(Required: Maximum 4000 characters allowed)*

**8 Criminal History Record Information Review of Certain Contract Employees**

Bidder agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. The undersigned Bidder, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. The Bidder agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. The Bidder further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.

**A. None of my employees** and any of my subcontractors has or will have continuing duties related to the contracted services; and has or will have direct contact with students. I further certify that my company has taken precautions or imposed conditions to ensure that my employees and any subcontractor will not have continuing duties related to the contracted services; and will not have direct contact with students throughout the term of the Contract.

OR

**B. Some or all of my employees** and/or my subcontractors will have continuing duties related to the contracted services; and will have direct contact with students. I further certify that:

1. I have obtained all required criminal history record information regarding all of my employees and/or my subcontractors. None of my employees and/or my subcontractors has any conviction or other criminal history information if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. **If available, attach a copy of your FAST Pass Receipt.**
2. If I receive information that any of my employees and/or subcontractors subsequently has a reported criminal history, I will immediately remove the covered employee from contract duties and notify the District in writing immediately.
3. I will provide the District with the names and any other requested information regarding any of my employees and/or subcontractors so the District may obtain criminal history record information if awarded a contract.
4. If the District objects to the assignment of any of my employees and/or subcontractors, I agree to discontinue using the individual to provide services to the District.

\*\*This is your electronic signature.

A. None - I hereby agree and certify.  B. Some or All - I hereby agree and certify.

*(Required: Check only one)*

**9 Confidential/Copyrighted Information**  
Contractor agrees, if a bid is, or parts of bid is confidential, the Contractor has specified by stamping in bold letters the term "CONFIDENTIAL" on all or the confidential part of the bid. The bid may be considered public information even though all or parts are marked confidential. Furthermore, Contractor agrees a copyrighted bid is unacceptable and will be disqualified as unresponsive.  
  
\*\*This is your electronic signature.  
 I have read and agree.  
(Required: Check if applicable)

**10 Declaration of Business Location - Texas Education Code 44.031(b)(8)**  
Bidder certifies the Bidder's or the Bidder's ultimate parent company or majority owner:  
  
A. Has its principal place of business in the State of Texas; OR  
B. Employs at least 500 persons in the State of Texas  
C. Principal place of business is not in the State of Texas.  
  
\*\*This is your electronic signature.  
 A. Principal place of business is in TX     B. Principal place of business employs 500+ in Texas  
 C. Principal place is NOT in Texas  
(Required: Check only one)

**11 Declaration of Business Location - Texas Education Code 44.031(b)(8)**  
Specify principal place of business (City/State).  
  
If not applicable, please enter N/A (not applicable).  
  
\*\*\*This is your electronic signature.  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
(Required: Maximum 4000 characters allowed)

**12 Delinquent Taxpayers**  
In accordance with law, the District shall not enter into a contract or other transaction with a person indebted to the District, nor shall the District award a contract to or enter into a transaction with an apparent low bidder or successful proposer indebted to the District.  
  
[ ] I am not a delinquent taxpayer to McAllen ISD  
[ ] I am a delinquent taxpayer to McAllen ISD (your bid may be disqualified if your debt is not cleared prior to award.)  
  
\*\*This is your electronic signature.  
 I am not a delinquent taxpayer to McAllen ISD     I am a delinquent taxpayer to McAllen ISD  
(Required: Check only one)

**1 3 Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises, & Labor Surplus Area Firms**

Contractor certifies the Bidder's company is HUB certified with the State of Texas.

- I am an Active certified HUB vendor (attach HUB certificate):
- Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms
- I am neither.

\*\*This is your electronic signature.

- [Select One]  I am an Active certified HUB vendor
- Small and Minority, WBE, Labor Surplus Area Firms  I am neither.

(Required: Check only one)

**1 4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies (SB 13)**

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

\*\*This is your electronic signature.

- I have read and hereby certify.

(Required: Check if applicable)

**1 5 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries (SB 19)**

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guideline, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

\*\*This is your electronic signature.

- I have read and hereby certify.

(Required: Check if applicable)

**1 6 Entities That Boycott Israel**

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

\*\*This is your electronic signature.

- I agree and hereby certify.

(Required: Check if applicable)

**17 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.

\*\*This is your electronic signature.

I have read and hereby certify.

*(Required: Check if applicable)*

**18 Sec. 2252.153. LISTED COMPANIES**

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.

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

\*\*This is your electronic signature.

I have read and hereby certify.

*(Required: Check if applicable)*

**19 Non-Collusion Statement**

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or business or legal entity.

\*\*This is your electronic signature.

I have read and hereby certify.

*(Required: Check if applicable)*

**20 Contracts in Excess of \$250,000**

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 101-19.08, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

\*\*This is your electronic signature.

I have read and hereby certify.

*(Required: Check if applicable)*

**21 Contracts in Excess of \$10,000**

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

\*\*This is your electronic signature.

I have read and hereby certify.

*(Required: Check if applicable)*

**2**  
**2** **Equal Employment Opportunity**

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

\*\*This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**2**  
**3** **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)**

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

\*\*This is you electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**2**  
**4** **Contract Work Hours and Safety Standards Acts (40 U.S.C. 3701-3708)**

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

\*\*This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**25 Rights to Inventions Made Under a Contract or Agreement**

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

\*\*This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**26 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**

Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

\*\*This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**27 (H) Debarment and Suspension (Executive Orders 12549 and 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by the District, the vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Vendor shall immediately provide written notice to the District if at any time the vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The District may rely upon a certification of a vendor that the vendor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the District knows the certification is erroneous.

\*\*This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**28 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**

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

\*\*This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**2 9 2 C.F.R. § 200.323 PROCUREMENT OF RECOVERED MATERIALS**

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

\*\*This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**3 0 2 C.F.R. § 200.216 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The District, as a non-federal entity, is prohibited from obligating or expending Federal financial assistance, to include loan or grant funds, to: (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and physical security surveillance of critical infrastructure and other national security purposes, and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes detailed in 2 CFR § 200.216. The vendor shall certify that they will not purchase equipment, services, or systems that use covered telecommunications, as defined herein, as a substantial or essential component of any system, or as critical technology, as part of any system.

\*\*This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**3 1 2 C.F.R. § 200.322 CERTIFICATION OF DOMESTIC PREFERENCES FOR PROCUREMENTS AND COMPLIANCE WITH BUY AMERICA PROVISIONS**

As appropriate and to the extent consistent with law, the District should, to the greatest extent practicable under a Federal award, provide has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) when spending federal funds. Vendor agrees that the requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

\*\*This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

**3 2 C.F.R § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms**

CFR 200.321 requires that (a) non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

\*\*This is your electronic signature.

I have read and hereby certify.  
(Required: Check if applicable)

**3 3 2 C.F.R § 200.334 RECORDS RETENTION REQUIREMENTS**

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Contractor certifies that Contractor is in compliance with all applicable provisions of 2 CFR 200.334.

\*\*This is your electronic signature.

I have read and hereby certify.  
(Required: Check if applicable)

**3 4 Buy American Provision**

Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.

\*\*This is your electronic signature.

I have read and hereby certify.  
(Required: Check if applicable)

**3 5 Federally Funded Purchases**

Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases.

\*\*This is your electronic signature.

I have read and hereby certify.  
(Required: Check if applicable)

**3** **Addendum**

**6**

Bidder/Respondent acknowledges that he/she will download and review all addenda issued on this project, if applicable.

\*\*This is your electronic signature.

I have read and hereby acknowledge.

*(Required: Check if applicable)*

**Bid Lines**

**1 PRODUCTS & SERVICES (SCOPE OF WORK)**

**Item Attributes**

**1. Qualifications**

Please check all that apply.

Materials

Installation

Repair

Removal

Demolition

Other

*(Optional: Check all that apply)*

**2. If "Other" was selected, list.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(Optional: Maximum 1000 characters allowed)*

**2 Companies' W-9 Information**

**Item Attributes**

**1. Does your company have a business name on Line 2 of the W-9?**

Yes

No

*(Optional: Check all that apply)*

**2. If your W-9 lists a business name on Line 2 of the form, Please submit an Assumed Name Certificate issued by the State/County on the response attachment tab.**

## Supplier Information

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

## Supplier Notes

**DRAFT**

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

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Signature*

**Exhibit "B" – Vendor's Services, Products and Fees Pursuant to  
Request for Proposal No. 2022-1024**

**DRAFT**



# AMERICAN FENCE

1501 Foster Street San Juan, Texas 78589

[g03446@sbcglobal.net](mailto:g03446@sbcglobal.net)

[ccantu71@yahoo.com](mailto:ccantu71@yahoo.com)

Ph. (956)929-6000 \* (956)867-6988

Fax (956)787-3820

Representative: Cesar Cantu

Phone Number: 867-64-88

## PROJECT ESTIMATE

\$30,400.00

Date: 04/28/2017

Company Name: McAllen I.S.D.

Project Name: McAllen Student Parking

City: McAllen

Phone: 987-12-12

Total Ft. 1200

Height: 6ft chain link Black Vinyl

Notes: 1 Double Gate 21ft wide.

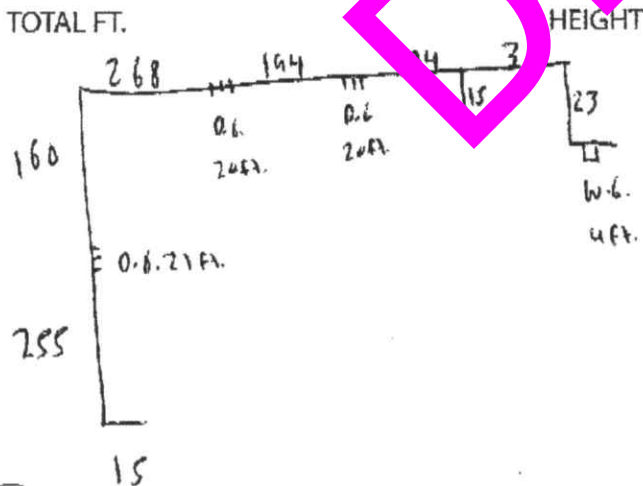
2 Gates 20ft wide.

1 Walking Gate 4ft wide.

Rolling Gate 36ft wide.

## JOB PLAN

## INSTALLATION / LOCATION



Note: Removed 1200ft of Existing Chain Link fence & gates and install New Fence & gates.

Note: Fence at Student parking  
Line post 2"  
Corner post 2 1/2"  
Gate post 3"  
Chain link wire 2x8 (4 core)  
Black Vinyl



# AMERICAN FENCE

1501 Foster Street San Juan, Texas 78589  
g03446@sbcglobal.net  
ccantu71@yahoo.com  
Ph. (956)929-6000 \* (956)867-6988  
Fax (956)787-3820

Representative: Cesw Cantu  
Phone Number: 867-69-88

## PROJECT ESTIMATE

\$16,020.<sup>00</sup>

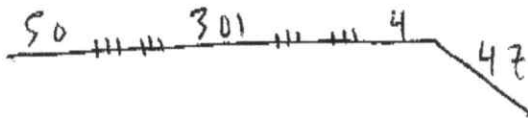
Date: 04/28/2022  
Company Name: McAllen I.S.O. Project Name: McAllen Stadium Fence  
City: McAllen Phone: 587-12-1111  
Total Ft. 402 Height: 6ft. Chain link fence Black Vinyl  
Gates: 4 Rolling Gates 15ft wide

## JOB PLAN

## INSTALLATION / LOCATION

TOTAL FT.

HEIGHT



Note: Removed 402ft. of Existing  
Chain link fence & gates and install  
New fence & gates.

Notes: fence at Stadium

Line post 2" sch. 40

Corner post 2 1/2" sch. 40

Gate post 3" sch. 40

Chain link wire 2x8 (4 case)

Black vinyl.



# AMERICAN FENCE

1501 Foster Street San Juan, Texas 78589  
g03446@sbcglobal.net  
ccantu71@yahoo.com  
Ph. (956)929-6000 \* (956)867-6988  
Fax (956)787-3820

Representative: Cesw Cantu  
Phone Number: 967-69-88

## PROJECT ESTIMATE

\$3,690.00

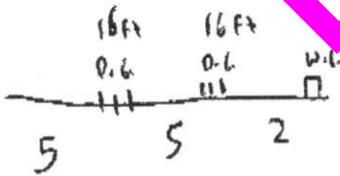
Date: 04/28/2022  
Company Name: McAllen S.S.O. Project Name: McAllen Perimeter Gate Entrance  
City: McAllen Phone: 987-1234  
Total Ft. 12 Height: 6ft. chain link Black vinyl  
Gates: 2 Drive Gate 16ft wide.  
1 Walking Gate 4ft wide

## JOB PLAN

## INSTALLATION / LOCATION

TOTAL FT.

HEIGHT



Notes: Removed 12ft of Existing  
Chain Link Fence & Gates and install  
New Fence & Gates.

Notes: Fence at Perimeter Gate  
Entrance.

Line Post 2" Sch. 40

Corner Post 2 1/2" Sch. 40

Gate Post 3" Sch. 40

Chain Link wire 2x8 (4 core)

Black vinyl



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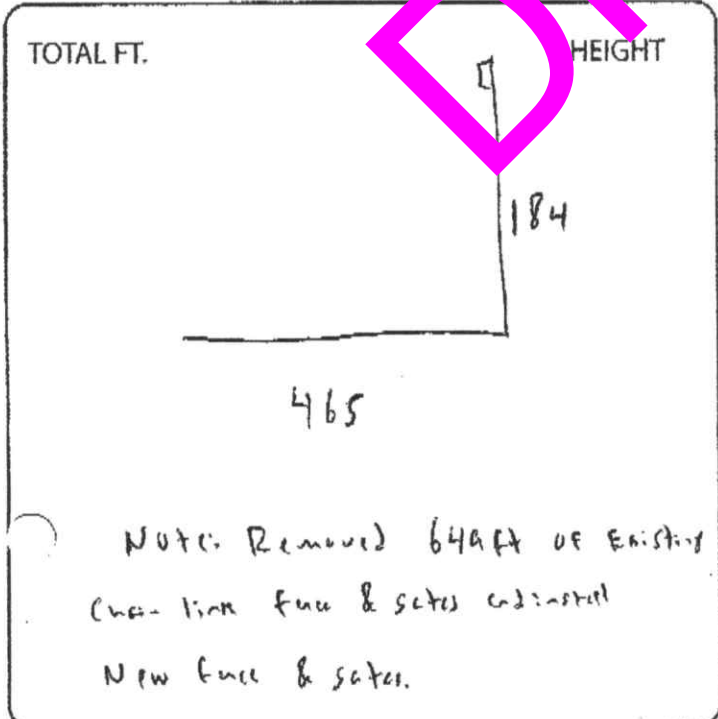
## PROJECT ESTIMATE

\$ 13,702.00

Date: 04/28/2022  
Company Name: McAllen I.S.D. Project Name: McAllen JV Soccer Field  
City: McAllen Phone: 587-12  
Total Ft. 649 Height: 6ft. Chain-link Black Vinyl  
Notes: 1 Walking Gate 5ft wide.

## JOB PLAN

## INSTALLATION / LOCATION



Note: Fence at JV soccer field  
line post 2"  
corner post 2 1/2"  
gate post 3"  
chain-link wire 2x8 (4 1010)  
Black vinyl



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Representative: Cesw Cantu

Phone Number: 867-69-88

## PROJECT ESTIMATE

\$30,128.<sup>00</sup>

Date: 04/28/2022

Company Name: McALLI I.S.D.

Project Name: Mc / Practice Soccer Field

City: McALLI

Phone: 587-12-1111

Total Ft. 1345

Height: 6 ft. chain link Black Vinyl

Gates: 1 Double Gate 30ft wide

1 Double Gate 16ft wide

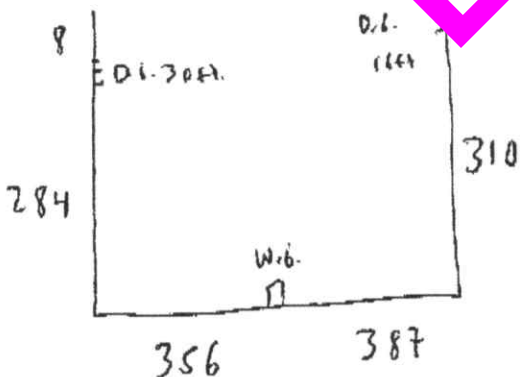
1 Walking Gate 4ft wide

## JOB PLAN

## INSTALLATION / LOCATION

TOTAL FT.

HEIGHT



Note: Removed 1345ft of Existing Chain Link fence & Sates and install New Fence and Sates.

Note: Fence at Practice Soccer Field

Line post 2" dia. 40

Corner post 2 1/2" dia. 40

Gate post 3" dia. 40

Chain link wire. 2x8 (9 core)

Black vinyl

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

**DRAFT**



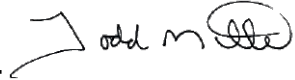
**Exhibit “D” – Payment Bonds**

**DRAFT**

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** Rosalba De Hoyos

**SUPERVISOR:** 

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



**JOB TITLE:** Director, UTRGV McAllen ISD Collegiate Academy (UMCA) **JOB CODE:** Pending BA

**REPORTS TO:** Associate Supt. for Instructional Leadership

**PAY GRADE:** AE-10

**DEPARTMENT OR CAMPUS:** Campus assigned

**DATE:** May 9, 2022

**WAGE/HOUR STATUS:** Exempt

**FUND/ DAYS:** 199/ 226

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**PRIMARY PURPOSE:**

To direct and manage the instructional program and supervise operations and personnel at the campus level; to provide instructional leadership to ensure high standards of instructional service; to oversee compliance of district policies, the success of instructional programs, and the operation of all campus activities.

**QUALIFICATIONS:**

**Education/Certification:**

Master's Degree, required

Texas Principal's Certificate or Administrator or Mid-Management Administrator Certificate, required

Texas Teacher Evaluation and Support System (T-TESS) appraiser, required

**Special Knowledge/Skills:**

Communicate effectively (verbal and written); utilize effective interpersonal skills; interpret data, federal and state laws and policies; demonstrate a working knowledge of curriculum and instruction; ability to evaluate instructional programs and teaching effectiveness; ability to manage budget and personnel; ability to coordinate campus functions; ability to implement policy and procedures; strong organizational skills, and ability to use technology.

**Experience:**

Three (3) years of experience as a classroom teacher, required

Three (3) years of experience in an instructional leadership role, required

**MAJOR RESPONSIBILITIES AND DUTIES/ESSENTIAL FUNCTIONS:**

1. Keep informed about current legislation, educational developments, literature, and research in curriculum and instruction by participating in state and national professional organizations; attend appropriate conferences and staff development sessions; disseminate professional information and materials to all campus staff.
2. Monitor instructional and managerial processes to ensure that program activities are related to program outcomes and use findings to take corrective actions.
3. Consult the campus-level committee as appropriate about the planning, operation, supervision, and evaluation of the campus educational program. Include students and community representatives when appropriate.
4. Provide a two-way communication with Superintendent, Associate Superintendent for Instructional Leadership, Assistant Superintendent for Instructional Services, and other central office and campus staff, students, parents, and community.
5. Foster collegiality and team-building among staff members. Encourage their active involvement in the decision-making process.
6. Communicate and promote expectations for high level performance to staff and students. Recognize excellence and achievement.

## Job Description

### Director, UTRGV McAllen ISD Collegiate Academy (UMCA)

7. Recommend selection of personnel and determine appropriate placement.
8. Lead in the preparation of the campus budget and monitor subsequent expenditure of local, federal, and other external funds to ensure appropriate utilization for all instructional programs.
9. Ensure that the school community is informed of the District Discipline Management Plan and that the plan is applied in a consistent, fair, and equitable manner.
10. Keep the immediate supervisor informed of planning in relation to any new projects and initiatives undertaken which may impact the inter and intra-district functions.
11. Provide the orientation to new teachers and set up the mentoring program.
12. Ensure the effective and quick resolution of conflicts.
13. Build a common vision for school improvement with staff. Direct planning activities and put programs in place with staff to ensure the attainment of the school's mission.
14. Identify, analyze, and apply research findings (e.g., effective school correlates) to promote school improvement.
15. Develop and set annual campus performance objectives for the Texas Accountability Rating System using the campus planning process and site-based decision-making committee.
16. Develop, maintain, and use information systems and records necessary to show campus progress on performance objectives addressing the Texas Accountability Rating System.
17. Interview, select, and orient new staff. Approve all personnel assigned to the campus.
18. Define expectations for staff performance with regard to instructional strategies, classroom management, and communication with the public.
19. Observe employee performance, record observations, and conduct evaluation conferences with staff.
20. Collaborate with the University of Texas Rio Grande Valley staff and leadership team.
21. Make recommendations to the superintendent on termination, suspension, or nonrenewal of employees assigned to the campus.
22. Work with campus-level planning and decision-making committees to plan professional development activities.
23. Confer with subordinates regarding their professional growth. Work with them to develop and accomplish improvement goals.
24. Comply with district policies, state and federal laws, and UIL policies and guidelines affecting the schools.
25. Develop campus budgets based on documented program needs, estimated enrollment, personnel, and other fiscal needs. Keep programs within budget limits. Maintain fiscal control. Accurately report fiscal information.
26. Maintain accurate inventory documentation; file timely reports in requisitioning textbooks.
27. Manage and supervise the maintenance of school facilities to ensure a clean, orderly, and safe campus.

Job Description

Director, UTRGV McAllen ISD Collegiate Academy (UMCA)

- 28. Work with faculty and students to develop a student discipline management system that results in positive student behavior and enhances the school climate.
- 29. Ensure that school rules are uniformly observed and that student discipline is appropriate and equitable in accordance with the Student Code of Conduct and the student handbook.
- 30. Conduct conferences about student and school issues with parents, students, and teachers.
- 31. Develop professional skills appropriate to the job assignment.
- 32. Demonstrate professional, ethical, and responsible behavior. Serve as a role model for all campus staff.
- 33. Articulate the school’s mission to the community and solicit its support in realizing the mission.
- 34. Demonstrate awareness of school and community needs and initiate activities to meet those needs.
- 35. Use appropriate and effective techniques to encourage community and parent involvement.
- 36. Demonstrate loyalty within a team approach to District initiatives.
- 37. Follow McAllen ISD customer service standards.
- 38. Perform other duties assigned by the immediate supervisor (primary evaluator).

**SUPERVISORY RESPONSIBILITIES:**

Teachers, Counselors, Librarians, Nurses, Instructional Assistants, Campus clerical, and Custodians

**EQUIPMENT USED:**

Computer, copier, adding machine, fax machine, multimedia equipment

**WORKING CONDITIONS:**

**Mental Demands:**

Maintain emotional control under stress; ability to instruct; coordinate multiple projects; meet deadline work with frequent interruptions

**Physical Demands/Environmental Factors:**

Frequent prolonged and irregular hours; frequent district-wide and occasional state or national travel  
Occasionally lift and/or move up to 45 pounds and over; assist in the restraining of students in crisis situations

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The foregoing statements describe the general purpose and responsibilities assigned to this job and are not an exhaustive list of all responsibilities and duties that may be assigned or skills that may be required. Duties are subject to change to meet the needs of the district.

Approved by \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** Rosalba De Hoyos

**SUPERVISOR:** Judd Miller

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

*J. X. O'Sullivan*

235

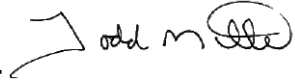
**Superintendent of Schools**

May 4, 2022

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** Rosalba De Hoyos

**SUPERVISOR:** 

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



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

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



237  
**Superintendent of Schools**

**BOARD AGENDA REPORT  
McALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**BOARD AGENDA REPORT  
McALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

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



Description	A	B	C		D	E	
	Original Budget	Revised Budget 03/31/2022	Budget Amendments Under Consideration		Revisions	Transfers	Revised Budget 04/30/2022
<b>Audited Fund Balance</b>	<b>107,594,997</b>	<b>107,594,997</b>					<b>107,594,997</b>
Revenues:							
Local:							
Property Taxes	84,787,994	84,196,013	1,500,000				85,696,013
Interest Income	878,000	528,000	(285,000)				243,000
Other Local Income	2,431,586	2,687,079	9,854				2,696,933
State:	133,383,459	117,328,186	5,116,168				122,444,354
Federal:	20,132,664	26,142,402	1,432,625				27,575,027
Other Sources:	0	202,697					202,697
<b>Total Revenues</b>	<b>241,613,703</b>	<b>231,084,377</b>	<b>7,773,647</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>238,858,024</b>
Expenditures:							
11 Instruction	126,586,945	125,783,362			(143,394)		125,639,968
12 Inst. Res. & Media Services	3,568,402	3,438,151			(977)		3,437,174
13 Curriculum Dev. & Inst. Staff Dev.	4,557,240	4,837,620			(80,997)		4,756,623
21 Inst. Leadership	3,450,687	3,285,801	91,168		(49,030)		3,327,939
23 School Leadership	13,393,257	13,337,929			12,448		13,350,377
31 Guid., Counseling & Eval. Ser.	9,820,599	9,992,089			16,157		10,008,246
32 Social Work Services	1,957,232	2,070,105			(472)		2,069,633
33 Health Services	2,885,127	3,044,329			909		3,045,238
34 Student (Pupil) Trans.	4,049,716	4,518,638			281,804		4,800,442
35 Food Services	17,265,197	19,559,170	812,903		5,650		20,377,723
36 Curricular/Extracurricular Act.	9,738,355	10,315,942			22,397		10,338,339
41 General Administration	8,043,476	8,647,912	(215,447)				8,432,465
51 Plant Maint. & Operations	20,349,685	25,655,873			(108,799)		25,547,074
52 Security and Monitoring Serv.	4,415,229	5,511,627			51,127		5,562,754
53 Data Processing Services	4,429,511	6,430,547			(1,813)		6,428,734
61 Community Services	36,710	95,327			2,000		97,327
71 Debt Service	5,905,151	7,197,528	(1,180,000)				6,017,528
81 Fac. Acquisition & Const.	6,000	3,700,652			(7,010)		3,693,642
95 Pmt. to Juv. Justice Alt. Ed. Prg.	40,000	40,000					40,000
99 Other Intergovernmental Charges	939,270	939,270					939,270
Other Uses	85,000	133,780					133,780
<b>Total Expenditures</b>	<b>241,522,789</b>	<b>258,535,652</b>	<b>(491,376)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>258,044,276</b>
		240					
<b>Preliminary Ending Fund Balance</b>	<b>107,685,911</b>	<b>80,143,722</b>	<b>8,265,023</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>88,408,745</b>



**DEBT SERVICE**

Description	A	B	C		D	E
	Original Budget	Revised Budget 02/28/2022	Budget Amendments Under Consideration		Revised Budget 04/30/2022	
			Revisions	Transfers		
<b>Audited Fund Balance</b>	<b>2,639,059</b>					<b>2,639,059</b>
Revenues:						
Local						
Property Taxes	6,581,732	6,881,732	325,000			7,206,732
Interest Income	2,000	2,000				2,000
Other Local Income	61,000	66,333	25,732			92,065
State	161,168	198,749				198,749
Federal	0	0				0
Other Sources	0	0				0
<b>Total Revenues</b>	<b>6,805,900</b>	<b>7,148,814</b>	<b>350,732</b>	<b>0</b>		<b>7,499,546</b>
Expenditures:						
71 Debt Service	6,805,900	6,805,900				6,805,900
<b>Total Expenditures</b>	<b>6,805,900</b>	<b>6,805,900</b>	<b>0</b>	<b>0</b>		<b>6,805,900</b>
<b>Preliminary Ending Fund Balance</b>	<b>2,639,059</b>	<b>342,914</b>	<b>350,732</b>	<b>0</b>		<b>3,332,705</b>

DEBT SERVICE  
Revisions

REVENUES:

**Local**

<b>Property Taxes</b>	- Increase to Tax Collections for Fund 599 Debt Service Fund	<u>\$ 325,000</u>	325,000
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<b>Other Local Income</b>	- Increase to Royalties for Fund 599 Debt Service Fund	\$ 732	
	- Increase to Tax Penalties/Interest for Fund 599 Debt Service Fund	<u>25,000</u>	25,732

Grand Total	<u><u>\$ 350,732</u></u>
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**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** May 9, 2022

**SUBJECT:** Approval of Board of Education Meeting Minutes

**REFERENCE:** N/A

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

The minutes for each meeting of the Board of Education are traditionally brought to the Board for approval. After approval, the minutes become the Official Record of Board Action.

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

The Administration asks that the Board of Education consider approval of the attached minutes.

**LEGAL REVIEW:** None

**BUDGETARY CONSIDERATIONS:** None

**RECOMMENDED BOARD ACTION:**

That the Board approve the minutes of the following meeting(s):

Regular Board Meeting - April 25, 2022 - 5:00 P.M.  
Board Workshop - May 2, 2022 - 5:30 P.M.

**SUBMITTED BY:** *Natalia Goza*

For further information contact:

Name: Natalia Goza

Office: 956-618-6094

eMail: natalie.goza@mcallsisd.net

**SUPERVISOR:** *Sam Saldivar, Jr.*  
Sam Saldivar, Jr. (May 5, 2022 09:13 CDT)

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

*J. Adamsky*

244

**Superintendent of Schools** May 5, 2022



INDEPENDENT SCHOOL DISTRICT

## Board Workshop

Monday, May 2, 2022 5:30 PM

Dr. Ricardo Chapa Board Room/Administration Building of the McAllen Independent School District, 2000 North 23rd Street, McAllen, TX 78501

Attendance Taken at 5:29 PM.

Sam Saldivar, Jr., President:	Present
Tony Forina, Vice-President:	Present
Debbie Aliseda, Secretary:	Absent
Conrado Alvarado, Member:	Present
Sofía Peña, Member:	Present
Marco Suarez, Trustee:	Present
Daniel Vela, Trustee:	Present

### 1. CALL MEETING TO ORDER

The meeting was called to order at 5:30 P.M.

### 2. PUBLIC COMMENT(S)

The following community member(s) addressed the Board of Trustees;  
None

### 3. BOARD WORKSHOP #2

A) Discussion of Request for Proposals 2023-1000 General Legal Counsel Services  
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business  
Operations

Dr. J. A. Gonzalez, Superintendent

For information only.

### 4. ADJOURNMENT

Motion to adjourn at 6:43 P.M. This motion, made by Trustee Marco Suarez and  
seconded by Trustee Sofia Peña, Passed.

Debbie Aliseda:	Absent
Conrado Alvarado:	Yea
Tony Forina:	Yea
Sofía Peña:	Yea
Sam Saldivar, Jr.:	Yea
Marco Suarez:	Yea

Daniel Vela: Yea  
Yea: 6, Nay: 0, Absent: 1

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Board President

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Board Secretary

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** April 11, 2022

**SUBJECT:** Approval of Travel for Board of Trustees

**REFERENCE:** Goal 2: People Development

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

Policy requires Board Members to submit travel requests to the Board in advance when practical. The Board plans to attend the Texas School Board Association (TASB) Summer Leadership Institute (SLI), June 15-18, 2022 in San Antonio, Texas.

- TASB SLI - June 15-18, 2022 San Antonio,  
Texas

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

The Board of Trustees will report on the following trip(s):

**LEGAL REVIEW:**

None

**BUDGETARY CONSIDERATIONS:**

Funds for this trip have been allocated through the Board of Trustees' Budget.

**RECOMMENDED BOARD ACTION:**

That the Board of Trustees approve the travel request for Board of Trustees to attend the TASB Summer Leadership Institute, June 15-18, 2022, in San Antonio, Texas.

**SUBMITTED BY:** *Natalia Goza*

For further information contact:  
Name: Natalia Goza  
Office: (956) 618-6094  
Email: natalie.goza@mcallsisd.net

**SUPERVISOR:** *Sam Saldivar, Jr.*  
Sam Saldivar, Jr. (May 5, 2022 09:10 CDT)

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

*J. K. Langley*  
247  
\_\_\_\_\_  
**Superintendent of Schools**      May 5, 2022